



Meeting: **POLICY REVIEW COMMITTEE**
Date: **17 DECEMBER 2013**
Time: **5.00PM**
Venue: **COMMITTEE ROOM**
To: **Councillors Mrs M Davis, K Ellis, M Jordan (Chair),
Mrs E Metcalfe, R Musgrave, I Nutt, R Packham, I Reynolds
(Vice Chair), Mrs A Spetch.**

Agenda

1. Apologies for absence

2. Disclosures of Interest

A copy of the Register of Interest for each Selby District Councillor is available for inspection at www.selby.gov.uk.

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests.

Councillors should leave the meeting and take no part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

3. Minutes

To confirm as a correct record the minutes of the proceedings of the meeting of the Policy Review Committee held on 15 October 2013.

Pages 3 to 7 attached

4. Chair's Address to the Policy Review Committee

5. PR/13/11 – Welfare Reform

To consider the report from the Lead Officer Community Support, (pages 8 to 35 attached).

6. PR/13/12 – Contaminated Land Strategy

To consider the report from the Transformation Officer, (pages 36 to 82 attached).

7. PR/13/13 – Asset Transfer Policy

To consider the report from the Policy Officer, (pages 83 to 97 attached).

8. PR/13/14 – Work Programme 2013/14

To consider the Work Programme, (pages 98 to 100 attached).

Jonathan Lund
Deputy Chief Executive

Dates of next meetings
14 January 2014
15 April 2014

Enquiries relating to this agenda, please contact Richard Besley on:
Tel: 01757 292227
Email: rbesley@selby.gov.uk

Policy Review Committee

- Venue: Committee Room
- Date: 15 October 2013
- Present: Councillors M Jordan (Chair), Mrs M Davis, K Ellis, Mrs K McSherry (for Mrs E Metcalfe), R Musgrave, R Packham and A Spetch.
- Apologies for Absence: Councillors Mrs E Metcalfe (substitute Mrs K McSherry) and I Reynolds.
- Also Present: Councillor J Mackman.
- Officers Present: Karen Iveson, Executive Director (S151): Helen Drye, Lead Policy Officer; Eileen Scothern, Business Manager; Simon Parkinson, Lead Officer Community Support and Richard Besley, Democratic Services

11. DISCLOSURES OF INTEREST

There were no declarations of interest.

12. MINUTES

Councillor Musgrave asked that the minutes of the special meeting of the Policy Review Committee held on 12 September 2013 be amended to reflect that the declaration of non-registerable interest declared was in respect to CP6 within item 4 and not the whole of item 4.

RESOLVED:

To receive and approve the minutes of the Policy Review Committee held on 16 July 2013 and the special meeting held on 12 September 2013 as amended and they are signed by the Chair.

13. CHAIR'S ADDRESS

The Chair informed the Committee that he had received notice from Councillor Reynolds that he would be standing down from the Committee.

14. PR/13/6 – New Local Plan for the District & Revised Local Development Scheme

The Chair welcomed Cllr Mackman as the lead Executive Member for Place Shaping who was attending to present the report to the Committee.

The Executive Member and Officers explained that with the closure of Core Strategy's Examination in Public (EIP) and the publication of the Inspector's report the Executive are recommending to Council at its 22 October meeting that they approve the modifications and adopt the Core Strategy.

The Council is now moving forward with a combined Sites and Policies Local Plan (SAPP) to implement the Core Strategy.

The Executive ask that the Committee note the report outlining the scope of the SAPP and the accompanying timetable.

The proposals would allow Policy Officers to return to the Issue and Option Stage and create a new SAPP which the Committee will consider and comment on as new policy development to the Executive.

Responding to a question on resources the Lead Officer confirmed that Policy staff would be involved. A detailed timetable has been prepared by Officers to plan work and bring in extra resource when essential.

With regard to the 'call for sites' the Executive Member informed the Committee that the process was fully explained on the website and that a further call will be made during the Issues and Option phase of the SAPP.

RESOLVED:

To note the report.

15. PR/13/7 – Planning Conditions

On behalf of Richard Sunter, Senior Planning Officer the Business Manager, Eileen Scothern presented the report drafted as a result from a motion tabled by the Labour Group at Council.

The report covers the two areas of concern from Council, Contractors Site Compounds and facilities for Wheel Washing and their enforcement.

The Manager confirmed that there were difficulties imposing conditions and the Senior Planner sought within the report to recommend to the Committee the use of informatives.

Councillor Packham put forward a counter proposal to that recommended by the Senior Planner.

This was seconded by Councillor Davis.

RESOLVED:

In response to the concerns of members relating to the impact on the local highway network resulting from the implementation of planning permissions, Officers take the following actions:

- 1. Attach conditions to planning permissions relating to the provision of contractors' site compounds and wheel washing facilities where considered appropriate, based on the scale of the development and the likely impact on the area, including cumulative impact. Where such conditions are not proposed in relation to major developments informatives are used and the officer's report will explain why it is not considered necessary;**
- 2. Look at ways of working with the Civil Parking Enforcement team and County Highways to address problems where conditions are not attached to planning applications, (for example where developments are of limited scale) and issues arise relating to parking or mud and debris on the highway;**
- 3. Consider how the issue can be further addressed by the inclusion of a development management policy in the Selby Area Local Plan;**
- 4. Draft an advisory note for developers, explaining the above approach; and**
- 5. Raise the matter at the Developer forum, explaining members concerns.**

16. PR/13/8 – Renewable Energy Task and Finish Group

The Chair confirmed that the Task & Finish Group had worked with the Lead Policy Officer who had prepared the report before the Committee that made recommendations to take forward guidance on the development of wind farms in the area.

The Lead Officer referred to new National Planning Policy Framework (NPPF) that seeks an increase in the use and supply of green energy. The NPPF warns Planning Authorities not to rule out applications through inflexible rules on buffer zones and separation distances and the lead Officer confirmed that any new guidance should be compliant and consistent with the Core Strategy as well as the NPPF.

The Chair confirmed that the T & F group had already had an informative meeting with a Councillor from Staffordshire County Council who had been responsible for bringing a Policy paper to his Council for adoption. He hoped

that the T & F would now sit on one more occasion to develop a policy to the Committee for its January meeting.

The Committee were committed to any policy being open to all forms of green energy, such as solar power and noted that in Europe large scale solar farms were very effective, and those types of alternative energy must be better for communities than the current local power stations with emissions and dust/soot fallout particles.

RESOLVED:

- i Develop a Guidance Note on wind farm development consistent with the Selby District Core Strategy and compliant with the national Planning Policy Framework and associated guidance be developed.**
- ii The guidance note should cover the issues identified in paragraph 2.33.**
- iii Review the AECOM Renewable Energy Capacity Plan (Appendix 3) to ensure that it provides a current evidence base.**
- iv Map all built and approved wind turbines on the Selby District to the AECOM Renewable Energy Capacity Plan (Appendix 3)**
- v Include Solar Energy into the Scope of the Task and Finish group and meet to research this area of activity.**
- vi full fees and charges for planning applications be charged, including pre and post application advice.**

17. PR/13/9 – Welfare Reform (Scoping)

Following a motion by the Labour Group to Council in June the Committee been asked to review the current policy on Spare Room Subsidy (SBS), often referred to as the “Bedroom Tax” Simon Parkinson, Lead Officer Community Support attended to report on the current position on SBS and to seek the Committee’s direction on the proposed policy report to be brought before the Committee in December.

The Officer reported on the number of tenancies that had been reduced to date, where tenants had relocated to smaller/more appropriate homes.

The Officer confirmed that the North Yorkshire Home Choice policy had been amended to reflect legislation and that no one can now bid for homes that are larger than the tenants need.

People that fall in the SBS threshold are banded and are top priority when seeking to downsize.

Asked by the Committee, the Officer could confirm that no tenant had been evicted as a result of SBS and the relative increase in Council Tax and that

Officers were studying figures on Rent/Tax arrears to see whether they are as a result of SBS.

The Policy paper to be brought to the Committee will also consider an exemptions policy, as the Council are currently adhering to statutory exemptions only.

The Officer confirmed that there was very little exemption on room size, with the view that if a room could occupy a single bed, it was deemed a bedroom. The Officer was pleased to confirm that the Tenants Transfer Incentive scheme was available and 6 tenants had moved so far through that scheme.

The Officer asked the Committee for the scope of the policy with a wide remit of Welfare Reform. The Committee felt that the policy should include details on Benefit Cap as well as SBS it was best to leave Universal credit to a future Committee date.

The Committee look forward to the report at its meeting in December.

17. WORK PROGRAMME 2013/14

The Chair confirmed that the Welfare Reform policy will come before the Committee in December and that Renewable Energy and the Issues & Options stage of the SAPP would be placed on the Work Programme for January.

RESOLVED:

To note amend the Policy Review Committee Work Programme for 2013/14.

The meeting closed at 7.01pm.



Report Reference Number PR/13/11

Agenda Item No: 5

To: Policy Review Committee
Date: 17th December 2013
Author: Simon Parkinson
Lead Officer: Simon Parkinson

Title: Welfare Reform - Six Month Update

Summary: To provide a 6 month review detailing the effect of the Welfare Reform changes in Selby district and to outline various policies in relation to Welfare Reform for consideration.

Recommendation: That councillors note the report and specifically:

- (i) Consider the current rent recovery policy, and endorse the position that failure of an individual to engage with the council at any of the many intervention and support stages may result in the council applying for an eviction warrant (Appendix 1).
- (ii) Consider and endorse the current Discretionary Housing Payments policy (Appendix 2).
- (iii) Endorse the adoption of only nationally recommended exemptions in relation to re-classification of bedrooms.
- (iv) Advise officers of any other areas where they consider a review of policies would be appropriate.

Reason for recommendation

At the Council meeting on 25th June 2013 councillors requested a six monthly update and a review of welfare reform related policies and processes be considered by Policy Review Committee.

1. Introduction and background

1.1 An update on the current position regarding Welfare Reform and a review of current policy relating to Welfare Reform has been requested by Policy Review Committee. The update was asked to include the following points:

- the number of people affected by this legislation (the figure of 700 has been used when reporting to NYCC)
 - the number of people who have contacted SDC asking for a smaller property after receiving the notification letter from SDC
 - the number of smaller properties currently available and their location and further, that the Policy Review Committee be asked to review the current policy and its operation, and in particular
 - where individuals find alternative properties in the private or RSL market, what incentives are available to support their move and what might prevent individuals from qualifying for these incentives
 - areas where SDC will provide exemptions in addition to the national recommendations (e.g. adapted properties, family health needs, children with ADHD who cannot share, elderly couples with health issues)
- 1.2 The Welfare Reform change that has had the most effect on social tenants is the Housing Benefit Size Criteria/Spare Room Subsidy (universally known as the Bedroom Tax) which came into force on 1st April 2013. Much of this report will focus on the effects of this change.
- 1.3 The other significant change saw the introduction of the Benefit Cap in July 2013. There has been little impact from this change in Selby district but we will touch on this briefly later.

2. The Report

2.1 Housing Benefit Size Criteria/Spare Room Subsidy

- 2.11 This change applies to working-age people living in social housing. It means that Housing Benefit will no longer be paid towards bedrooms that tenants are deemed not to need.
- 2.12 Any social tenant assessed as having more bedrooms in their accommodation than they need will now be considered to be under-occupying that property.
- 2.13 The new rules allow one bedroom for:
- Every adult couple (married or unmarried)
 - Any other adult aged 16 or over
 - Any two children of the same sex aged under 16
 - Any two children aged under 10
 - Any other child (other than a foster child or child whose main home is elsewhere)
 - A carer (or team of carers) who do not live with at the property but

provide a member of the household with overnight care

- 2.14 Any tenant assessed as under-occupying will receive a percentage reduction to their Housing Benefit entitlement. The percentage reduction will depend on how many rooms the tenant is under-occupying by:

14% if someone is considered to have one extra bedroom

25% if someone is considered to have two or more extra bedrooms

2.2 The number of people affected by this legislation

- 2.21 Number of SDC tenants affected by the under occupancy charge has decreased slightly since April.

Number of tenancies with 1 extra bedroom: 291 (314 in April 2013)

Number of tenancies with 2 extra bedrooms: 57 (69 in April 2013)

The reason for these reductions is not clear and may be connected with households moving house or to a change of circumstances within the household.

- 2.22 The number of Housing Association tenants affected by the under occupancy rule is as follows:

Number of tenancies with 1 extra bedroom: 172

Number of tenancies with 2 extra bedrooms: 16

- 2.23 In the lead up to April, the Community Officer team offered direct support to those tenants identified as being affected by the legislation change. This support included 1-2-1 advice on options available to mitigate the effects of the changes. The community officers offered advice on maximising income; the impact a lodger could have and helped tenants with housing options for those that wanted to downsize. They also supported tenants to complete Discretionary Housing Payment applications.

- 2.24 The North Yorkshire Home Choice Allocations Policy has been amended to support the welfare reform changes. The policy now allows councils to prioritise applicants that are under occupying and allows a degree of discretion and flexibility when considering arrears that are as a result of the spare room subsidy.

The policy will also only allow the offering of properties to households that have the correct bedroom need, thus ensuring that we are not placing people in potentially vulnerable financial situations.

- 2.25 Rent Arrears – Rent recovery is dealt with in line with the corporate debt policy. The relevant passage is reproduced in Appendix 1. To date it has not been possible to show a link between the welfare reform changes and rent arrears. The amount of council rent recovered is broadly in line with the same period last year.

As a general rule, there is significant officer time spent engaging and supporting tenants who find themselves in rent arrears and the ultimate penalty of eviction is rarely reached.

There have been 5 evictions since April 2013 – 1 of which was affected by the spare room subsidy although it should be noted that this person had significant arrears prior to this (there were 4 evictions during the same period during 2012).

The council has received no authority to amend the policy in relation to rent recovery to take account of welfare reform issues.

- 2.26 Policy Review Committee is asked to consider the current rent recovery policy, and to endorse the position that failure of an individual to engage with the council at any of the many intervention and support stages may result in the council applying for an eviction warrant.**

- 2.3 The number of people who have contacted SDC asking for a smaller property after receiving the notification letter from SDC**

- 2.31 It is not easy to identify the number of households that have asked for a smaller property as a direct result of the spare room subsidy as there is no requirement to give this information on their application. However out of the 69 Tenants that were deemed to have 2 or more extra bedrooms 7 have moved to a smaller property supported by the Tenants Transfer Incentive Scheme.

- 2.32 There are currently 772 live applications registered with us in the Selby District and 637 are for working age applicants. Of the working age applicants 48 are in Gold band and 294 Silver. Gold Banding includes applicants who have 2 or more surplus bedrooms and Silver applicants who have 1 surplus bedroom. Again it is difficult to identify the number of households with gold or silver banding directly as a result of the spare room subsidy as there is no requirement to give this information on their application.

- 2.4 The number of smaller properties currently available and their location**

- 2.41 The numbers for last week as are follows;

3 x 2 Bed properties advertised for Mutual Exchange.

3 x 2 Bed Properties available through Home Choice.
2 x 1 Bed properties available through Home Choice.

I do not currently have information relating to the exact location of these properties.

2.42 1 bedroom sheltered accommodation is currently the hardest accommodation to let. Many people who currently occupy 2 bed accommodation find themselves needing to downsize when family members move out. These people tend to fall outside the 60+ age group and therefore are not eligible for 1 bed sheltered accommodation.

2.43 Since April there have been;
14 – 1 bedroom general needs properties available
32 – 1 bedroom sheltered accommodation available.

2.5 Where individuals find alternative properties in the private or RSL market, what incentives are available to support their move and what might prevent individuals from qualifying for these incentives

2.51 Discretionary Housing Payments (DHP) are available for people who find themselves in financial hardship due to the welfare reform changes. Additional funding has been made available in 2013/14 to cope with the extra demand that has resulted from these changes. DHP should not be regarded as a long term solution and should only be used to support individuals while they look to move house or stabilise their financial position.

The Discretionary Housing Payment Policy is attached as Appendix 2 to this report.

To date 173 households have received DHP since April 2013. The Housing Options Team write to all applicants of DHP to offer advice and assistance whether they are successful or unsuccessful in their application and the Community Officers contact all such households prior to the end of DHP to ensure they receive continuing advice and support.

The current projection is that the DHP funding made available for 2013/14 will be spent in full by the year end. This suggests that the current policy relating to issuing DHP should not be amended.

What might prevent someone qualifying?

- DHP is no longer available to cover shortfalls in Council Tax (since the abolition of Council Tax Benefit in April 2013, such claims are covered by Council Tax Support (which is administered in the same way as DHP))

2.52 Policy Review Committee is asked to endorse the current Discretionary Housing Payments policy (see Appendix 2).

2.53 The Bond Guarantee Scheme - This scheme offers help to individuals who are homeless or in receipt of a means tested benefit and have an opportunity to access the private rented sector as a solution to their difficulties. If an individual finds a property with a landlord willing to accept the scheme they can approach the council for assistance with the Bond. The Council will guarantee a bond of up to £400. If the tenant has incurred rent arrears or has damaged the property when they leave, the council will pay the landlord up to £400 against this debt.

What might prevent someone qualifying?

- The criteria is limited to individuals or couples who are either homeless or in receipt of a means tested benefit.
- Not all Landlords are willing to accept the guarantee scheme

2.54 Homeless Prevention Fund – The fund provides medium to long term support (up to a maximum of £500) for people who are unable to afford to access alternative accommodation and where failure to use the fund is likely to result in a household being placed in temporary accommodation. Support is available for people aged 16 and over who live in the district.

The fund should only be used where other options for prevention that may not involve financial assistance have been exhausted. Some prevention measures such as home visits, landlord liaison and signposting do not involve any costs. Also, there may be other schemes (DHP, Mortgage Rescue Scheme, Personalisation, Repossession Prevention Fund) already in place that offer a more appropriate solution and consideration should be given to all options to offer a tailored approach.

In terms of finding alternative accommodation the fund can be used for:

- Rent in advance (1 month or equivalent up to a maximum £500). Monies will only be provided on production of a signed tenancy agreement.
- Rental deposits or bond authorisation (1 month or equivalent up to a maximum £500 and only *if* this funding is not accessible through the Bond Guarantee Scheme).

What might prevent someone from qualifying?

- Funding will not be available if there is unpaid debt from a Bond Guarantee Scheme (BGS) or there are significant arrears from the tenancy the BGS secured.

- 2.55 Tenants Transfer Incentive Scheme – whilst only available to council tenants this Incentive Scheme is an important tool for helping people move to alternative accommodation. The scheme offers financial support for removal and redecoration costs to encourage people to downsize from their existing council accommodation to a smaller home with fewer bedrooms.

The scheme is open to all tenants wishing to downsize either within family accommodation, or transferring out of family accommodation into older person's accommodation or one bedroom general needs accommodation.

What might prevent someone from qualifying?

- Applicants must be a secure tenant of Selby District Council and have a satisfactory tenancy report that shows that:
 - ❖ The current home meets our standards;
 - ❖ We are not taking antisocial behaviour action against the applicant; and
 - ❖ The applicant does not have any current rent arrears outstanding

2.6 Areas where SDC will provide exemptions in addition to the national recommendations

- 2.61 We currently provide exemptions in line with the Housing Benefit (Amendment) Regulations 2013. These allow **an additional room for approved Foster Carers; approved or prospective Adoptive parents; and parents of Armed Forces Personnel** (each of which have qualifying criteria that must be met).
- 2.62 In addition a recent **Court of Appeal judgement** found that the Local Housing Allowance size criteria which applies to Housing Benefit in the Private Sector (and which the Social Size Criteria replicates) discriminated unlawfully against three appellants on grounds of disability, by not including provision to meet their need for an additional room. As DWP withdrew their appeal this it now stands as case law from the date of the decision, and equally affects Housing Benefit claimants in both the Private and Social Rented Sectors. However the judgement only applies to families with disabled children.
- 2.63 DWP advises that the only other criteria that can be taken into account is whether or not the spare room is physically capable of actually accommodating a single bed. The council considers adapted properties under this rule, (e.g.: where a through floor lift is located in a room)
- 2.64 Whilst we are free to re-designate the number of bedrooms in a property, we must be mindful of Lord Freud's letter to Chief Executives of 20th June:

In principle my Department has no objections to re-designating properties where there is good cause to do so, for example where a property is significantly adapted to cater for a disabled persons needs. However, we would expect the designation of a property to be consistent for both Housing Benefit and rent purposes. Blanket re-designations without a clear and justifiable reason, and without reductions in rent, are inappropriate and do not fall within the spirit of the policy.

2.65 Policy Review Committee is asked to endorse the adoption of only nationally recommended exemptions in relation to re-classification of bedrooms.

2.7 Benefit Cap

2.71 7 households living in Selby district are currently affected by the Benefit Cap. These can be broken down into the following tenures;

1 Council	Highest Reduction £11.02pw Lowest Reduction £11.02pw
3 Housing Association	Highest Reduction £97.38pw Lowest Reduction £10.50pw
3 Private Rented	Highest Reduction £81.32pw Lowest Reduction £9.15pw

2.72 There is no evidence of any negative impact from the Benefit Cap.

3. Legal/Financial Controls and other Policy matters

3.1 Legal Issues

The provision of financial support to individuals falls within the councils legal responsibilities and will be subject to relevant terms and conditions.

3.2 Financial Issues

3.2.1 We continue to monitor the effect on welfare reform changes on the relevant income and expenditure budgets.

3.2.2 All support incentives are delivered in line with current budget provision.

4. Conclusions

4.1 A total of 536 social tenants have been affected by the Spare Room Subsidy (348 Council/188 Housing Association).

- 4.2 The Council offers a range of support services to help those affected. This includes one to one support and advice as well as access to a range of financial assistance tools.
- 4.3 The Council continues to monitor the effect of the Spare Room Subsidy to identify trends, to ensure the effective use of existing resource and to identify areas where further additional support may be required.
- 4.4 There is no evidence of any negative impact in the district from the Benefit Cap.
- 4.5 A further review of the welfare reform position will be presented to Council in June 2014.

5. Background Documents

There are no background documents associated with this report.

Contact Officer: *Simon Parkinson*
Selby District Council
sparkinson@selby.gov.uk

Appendices:

Appendix 1 – Extract from the Corporate Debt Policy (Rent Recovery)

Appendix 2 – Discretionary Housing Payment Policy

APPENDIX 1 - Rent Recovery

- Reminders followed by a Notice Seeking Possession will be issued when an account falls into arrears.
- If the arrears are not cleared and continue to increase, an attempt to visit the customer will be made before the 28-day hold period of the Notice Seeking Possession expires.
- Customers will be encouraged to contact the section to discuss payment arrangements and the difficulties that they are experiencing paying their rent. Customers will be advised to claim Housing Benefit if the member of staff thinks that they may be entitled. Temporary arrangements based on a trial calculation of their entitlement may be made whilst waiting for a claim to be processed. Advice may be given on other welfare benefits that may be identified as a result of the trial calculation.
- When court action is being considered a court-warning letter will be issued. This will advise that the Council is considering court action and will request information about the customer's financial situation and information about other people resident in the household.
- A member of staff will deliver this letter and attempts will be made to speak to the customer about their account and discuss a suitable payment arrangement. Customers will be encouraged to claim Housing Benefit, or other welfare benefits, if it is felt that there may be possible entitlement.
- The possibility of deductions from Income Support to cover arrears will be explored. If the customer agrees to this then court action may be avoided. The arrears must be over four weeks full rent for the application to be made. The customer has to sign a pro-forma agreeing to these deductions.
- If an arrangement is then not maintained and the arrears continue to increase the account may then need to be entered into court. If no contact is received from the customer at this point an officer will visit the property and attempt to make contact. All customers will be sent a date and time for a court interview approximately two to three weeks before the court hearing.
- Should the tenant not attend the interview, or make contact with the section, a visit will be made to the property 1 week before the hearing date to establish contact and make a suitable arrangement and establish family circumstances.
- Customers will be made aware of the court procedures and costs. They will be given the opportunity to make an arrangement to pay their current rent and an amount off the arrears. They will be advised that a suspended possession order will be requested (provided they are secure tenants) based on rent plus the amount that they have agreed to pay off the arrears. The implications of not keeping to the arrangement will be clearly explained.
- If the customer is on Income Support or Job Seekers Allowance (Income Based) and they are receiving full Housing Benefit the standard deduction amount (currently £3.60) will be requested as the amount payable each week off the arrears. This will also be the case for people on low incomes who receive full Housing Benefit.
- If the arrears continue to increase and no contact is received from the customer, further attempts will be made to contact the customer by home visit, telephone and letter before considering applying for an eviction warrant.

Appendix 2



DISCRETIONARY HOUSING PAYMENTS (DHP) POLICY & GUIDANCE

SECTION A: POLICY

1. COUNCIL RESPONSIBILITIES

This revised policy (effective from April 2013) has been written to reflect the changes to the Discretionary Financial Assistance Regulations 2001 which ensures that the DHP scheme covers the abolition of Council Tax Benefit (CTB) and the introduction of Universal Credit (UC).

As importantly, it also takes account of the changing welfare benefits landscape, in particular the reductions in Housing Benefit (HB) / Local Housing Allowance (LHA) rates brought about by national welfare reform, the increased DHP funding available to councils and new DWP guidance (which can be found here).

It remains the case that the Council can make additional payments where someone's HB does not meet their rent and in its view is in need of further financial assistance in order to meet housing costs.

HB DHPs cannot be paid in respect of Local Council Tax Support (LCTS) therefore the Council instituted from April 13 a separately funded Local Council Tax Support Discretionary Hardship Scheme as part of our Council Tax Support Scheme. This ensures the provision of support to those householders who do not have a rental liability, or who have such a liability but do not receive HB.

DHP is not a benefit payment but made in addition to HB/UC.

So that the annual fund is not exceeded and is spent fairly the Council must ensure that:

- HB entitlement is calculated accurately and promptly
- DHP expenditure is monitored effectively taking such action as limiting monthly expenditure to ensure the fund lasts throughout the year.
- Overpaid DHP is recovered

2. APPLICATION OF THE POLICY

The policy supports the Council's overarching strategic objectives of its Financial Inclusion Strategy, as well as income maximisation and homelessness prevention. It should interact appropriately with the services offered by the Housing Options Team by ensuring that financial assistance is considered from the right source/funding.

There is no definition of 'further financial need' nor 'housing costs'. Each case must be considered on its own merits and there should not be rigid criteria which would fetter the council's discretion. The policy must be flexible. Relevant factors that should be taken into account include:

- Customers' health / financial circumstances.
- Steps taken by the customer to alleviate their financial position
- Any unusual or exceptional circumstances relating to housing costs.

The policy has regard for the rights of the individuals and obligations of the Council under the provisions of the Human Rights Act 1998.

3. ELIGIBILITY FOR DISCRETIONARY HOUSING PAYMENT

DHPs can only be made where the customer is entitled to

- Housing Benefit (HB) or
- Universal Credit (UC) and
- has to pay rent and
- is in need of further financial assistance with housing costs.

The types of shortfall that a DHP can cover include reductions in HB or UC where the following applies:

- the overall 'benefit cap';
- the size criteria rules for social housing (sometimes known as the 'bedroom tax');
- the general restrictions in the LHA rates;
- a Rent Officer determination is less than the contractual rent
- a non-dependant deduction is made
- income tapers.

DHPs cannot cover:

- ineligible service or water charges
- an increase in rent due to rent arrears
- certain sanctions and reductions in benefit
- any suspension of HB or a reduction caused by recovery of HB overpayments
- Council Tax where the claimant/partner is directly liable for it (except where it is an element of the rent).

4. RENT DEPOSITS AND RENT IN ADVANCE

DHPs can be paid for rent deposits or rent in advance for a property that someone has yet to move into if they are already entitled to HB/UC but some regard needs to be given to the new property's affordability. The DWP's position on this is quite clear in their guidance. The normal weekly limits do not apply when such lump sums are awarded.

This may be used where a council does not have a deposit guarantee scheme but in order to make best use of the cash-limited DHP fund, where these schemes exist, DHP should be used as a 'last resort'. Large lump sum payments of DHP for these kinds of expenditure could place an intolerable burden on the capacity of the fund to meet demands of other customers. Close co-operation with those staff who manage these schemes is therefore essential.

5. AMOUNT OF THE AWARD

The amount must not exceed the weekly shortfall in HB (except if made to cover advance rent or deposits) but the actual amount awarded will depend on each case.

The award can be made to cover the whole of the shortfall or part of the shortfall.

No DHP can be awarded if the annual fund has been exhausted.

6. LENGTH OF THE AWARD PERIOD

Awards can start from any date but would normally be linked to the date it was requested (paid from the Monday following) and/or the date that a reduction in HB started. There are no backdating rules as long as the criteria for entitlement are met.

Most awards will be for a maximum period of 13 weeks but can be for shorter or longer periods depending on an individual's circumstances; such as the tenant is likely to need help as long as they remain in the property due to a long term medical condition.

Expected changes in circumstances which will affect HB in the future must be taken into account when considering the period of the award. Such factors include whether:

- the need is likely to be short or long term;
- there is an event that would increase HB/UC in the future thereby reducing the shortfall (e.g. a significant age being reached, birth of a child)

7. REVIEW OF THE AWARD / RECOVERY OF OVERPAID DHPs

DHPs can be stopped or amended if changed circumstances alter HB/UC entitlement or there has been misrepresentation or a failure to disclose a material fact. Generally the Council will seek to recover overpayments if the overpayment resulted from such changes or if the payment was made in error. Recovery will be sought via a sundry debtor invoice.

8. PUBLICITY AND IDENTIFICATION OF POTENTIAL CLAIMS

The Council recognises the importance of publicising DHP arrangements especially in the current environment. Steps taken will include:

- ensure information on DHPs is included in HB entitlement letters;
- offering advice on DHP where relevant when customers contact benefits staff to query entitlement;
- identify / assist affected customers and work with partners to raise awareness and encourage take up;
- having up to date information on the Council's website;
- work actively with relevant partners to ensure that alternative advice and action is considered as necessary (e.g. referral to Housing Options, signpost for debt or benefit advice)
- proactive consideration of potential entitlement to DHP

9. INFORMATION REQUIRED FROM CUSTOMERS

An application can be made by any means of communication, in writing, by email or by phone.

However all such applications must be supplemented by the completion of an approved form (see Appendix A for an example) and can be accepted from anyone who is acting on a customer's behalf. Where the approved form is not completed, the application is considered to be defective. A period of 28 days is allowed for the correction of defective claims after which if the claim has not been remedied it will be disallowed, unless the Council considers it is reasonable to allow extra time due to exceptional circumstances.

Details of weekly income / expenditure are required in full on application form.

The Council may request reasonable evidence to verify the claim (e.g. medical evidence, proof of debts) although it simply refer to the information about income held on the HB claim records.

Evidence of steps taken to mitigate the claimants' financial position may be sought; for example, searching for cheaper accommodation, and/or reducing non-priority expenditure such as premium TV, mobile or broadband subscriptions.

10. PAYMENTS

Payments are made at the same time and by the same method as HB payments. They can be made to a landlord or their agent after consulting with the tenant.

Payments of DHP must be recorded separately from payments of HB for management information and subsidy purposes.

11. DECISION NOTICES

Notifications will be issued at the start, review, end and refusal of a DHP award and include

- The start date of the award
- The weekly amount of the award.
- How the payment is to be made.
- The length of the award.
- A reminder to report relevant changes in circumstances.
- Where refused, the reasons why the award has not been granted.
- Details of dispute handling

12. DISPUTES

There is no legal right of appeal but the council will review decisions if the customer requests us to do so in writing within one month of the decision giving reasons for the dispute.

The request must state the reasons why it is felt the decision is wrong. Any additional information or material affects that are to be considered should be provided.

The review will be carried out by a different decision maker preferably within 14 days of the receipt of the request. The outcome will be confirmed in writing.

The Judicial Review route is available as is referral, or where maladministration is an issue, to the Local Government Ombudsman following exhaustion of the council's own internal complaints procedures.

13. MANAGEMENT INFORMATION

Suitable management information arrangements will be in place to monitor and manage expenditure as well as to make the necessary returns to the DWP.

14. KEY WELFARE REFORM CHANGES (HB/LHA)

Additional DHP funding has been made particularly in response to the pressures that customers will experience as a result of the changes below and the guidance reflects the expected increase in demand from those changes.

- The removal of the 5-bed LHA rate and the cap of property size LHA rates (April 2011)
- Restriction of general LHA rates to the 30th percentile rather than the median (April 2011)
- Above inflation increases in non-dependant deductions (2011 to 2014)
- The extension of the shared room LHA rate for single people aged under 35 (Jan 2012)
- The introduction of size criteria for the social sector - a.k.a. the 'bedroom tax' (April 2013)
- Overall benefit cap (September 2013)
- Planned below inflation increases in LHA rates and welfare benefit amounts

SECTION B GUIDANCE FOR DISCRETIONARY HOUSING PAYMENTS

15. OVERRIDING POLICY OBJECTIVES

The following overarching objectives will help shape DHP decisions and are reflected in this guidance:

- Sustaining tenancies and preventing homelessness
- Alleviating poverty, particularly child poverty
- Retaining and encouraging employment
- Keeping families together
- Supporting victims of domestic violence
- Providing a safety net for those experiencing temporary and personal difficulties
- Promoting good educational outcomes

There are particular considerations that should be taken into account when customers are affected by the specific Welfare Reform changes noted in section 14 above.

Further guidance and a range of examples are contained in the DWP's Guidance ([click here](#)). Some examples of what to consider in particular circumstances follow:

16. Size Criteria for Social Sector Tenancies (also known as the 'Bedroom Tax')

The extra funding for this reform is aimed especially, but not exclusively, at a number of groups

- Supporting disabled people living in significantly adapted accommodation, including any made for disabled children
- Those with a long term medical condition that creates difficulties in sharing a room
- Support for approved or prospective adoptive parents waiting for the placement of a child
- Support foster carers who care for siblings or for two or more unrelated foster as rules only allow for one extra room.

It may be appropriate for longer term DHP awards to be made in certain of these circumstances. There is no definition of what might be 'significantly' adapted accommodation but permanent adaptations such as ramps, walk in baths, lowered kitchen units and widened doorways are likely to be regarded as significant. Moveable aids would not be. Liaison with social workers / support professionals is likely to be necessary to gather suitable information in these cases. Sympathetic consideration will be given to these categories to reflect Government intentions.

17. The general reduction in LHA rates

The use of the lower 30th percentile when setting LHA rates affects many private tenants and is now a common feature of the scheme, with Transitional Protection having been phased out by the end of December 2012.

It is likely that a DHP would only be awarded if there were additional relevant factors affecting that customer and should be taken into account. These include:

- Young families (supporting stable home life / communities)
- Expectant mothers (short term if birth of a child resulted in higher HB entitlement)

- Absent parents (maintaining family contact can accrue wider social benefits)
- Where a known future change will result in more HB e.g. a customer may turn 35 or reach pensionable age within 6 months of a DHP award starting or a dependant child reaching the age of 10 or 16 within 12 months of the award.

18. HB restricted because the rent exceeds the LHA rate – private sector tenants

- Are there any cheaper properties available in the area?
- Does the customer need to live in a particular area / location that may be more expensive?
- Did the customer have to choose the property quickly (this may be because of circumstances surrounding the last property)?
- Did the customer have a more restricted choice of property available to them (this may be due to debts or personal circumstances such as a need for adapted accommodation)?

19. HB restricted because the claimant is ‘over accommodated’ - private and social tenants

- Are there alternative smaller properties available to the customer?
- Is the customer pregnant?
- Does the customer have access or joint custody of children not ‘residing’ at the property?
- Does the customer (or family member) have medical reasons for needing additional rooms?

20. Exceptional additional costs to the tenant

These could be additional costs for special dietary foods, medical expenses, debt repayments, maintenance payments, funeral costs etc. An ‘allowance’ could be made for additional costs like these when considering the customers income (customer could have less than the ‘minimum income’ after these expenses).

- Is the customer missing out on any other welfare benefits?
- Are the additional costs necessary (supporting evidence may be required)?
- Has the customer received adequate advice and assistance on debt restructuring/arrangement to pay?
- How long are the additional costs likely to last for?

21. Are there any additional factors to consider?

Decisions should be made on the merits of individual circumstances. Where relevant the following should be taken into account as necessary:

22. Advice and Assistance

- Did the tenant access adequate advice and assistance before choosing the property?
- Did they have access to or receive information on LHA rates, rental accommodation lists, landlord and estate agent lists? Was housing advice or assistance available for securing accommodation available at this time?

- Does the customer have additional funds, either from disregarded savings or through family and friends for the shortfall?
- When HB is assessed it looks at the 'applicable amount'. This is the minimum income that the customer needs to live on. Without recourse to additional funds the customer may be in danger of falling below this minimum by using part of the income to pay for the shortfall.

23. Prevention of Homelessness

Homelessness has a very negative impact on affected households. Temporary homeless accommodation is expensive and disruptive to family life. It is important that early intervention to prevent homelessness should be a key issue when looking at each case. Staff should work closely with Housing Options and other stakeholders to help prevent loss of tenancy.

DHPs could help in the following:

- Preventing the household from being evicted and becoming homeless.
- If a claimant had been given a tenancy after being homeless, DHP could help them settle into their new home and area in the first few months.
- An award of DHP could be central to the person being able to access or maintain employment, education or training and they would then be less likely to become homeless.
- Paying DHP to households that have previously been homeless would help to increase long term stability of their accommodation.
- Help avoid the emotional, physical and social costs to the household.

In addition consideration should be given to the impact that the eviction would have on subsequent availability of rental accommodation from the same landlord.

24. Maintaining access to private rented sector

Whilst a DHP award depends on the customers' circumstances and not the property itself the DWP say that research has shown that where DHP are maximised this attracts and retains close working relationships with the private sector and encourages a wider range of properties available for tenants in receipt of HB.

25. TYPICAL QUESTIONS TO ASK CUSTOMERS

Getting answers to the following enquiries will help when considering a DHP award:

A ...about the tenancy

1. Is there scope for the landlord to reduce the rent?
2. Would the landlord accept a lower rent if HB was paid direct to them?
3. Has the landlord been asked to reduce the rent and what was the outcome?
4. Can the tenant exit the tenancy before the due date without incurring legal costs etc?
5. Could Housing Options help the claimant negotiate a lower rent or negotiate on their behalf?

6. Is the claimant willing to and able to let out a room (but beware of the impact on income related benefits)
7. Did the claimant enquire before taking on the tenancy what level of HB they could expect to receive?

B ...about the household's financial circumstances

1. Does the claimant have other debts to pay?
2. Have they sought and obtained debt advice?
3. Can the claimant re negotiate non priority debts?
4. Is the claimant entitled to any other welfare benefits?
5. Do they have capital or disregarded income that they could use to make up the shortfall?
6. Can the claimants spending pattern change on non-essential items?
7. Could the claimant afford the rent when they moved in?
8. Is the claimant working but has high travel costs?

C ...about the household's medical needs

1. Are there any health/support needs which require them to remain in a particular property or location or mean that choice of housing is restricted temporarily or permanently?
2. Is there a need for an extra room because of health or disability problems that affects them or a member of the household?
3. Does the household have to live where they do because of the need for access to medical or support services? e.g. hospitals
4. Are there extra health-related expenses, such as therapeutic classes or non-prescription medicine?

D ...about other relevant considerations

1. Is the claimant fleeing violence and has not had time to look for cheaper property?
2. Is the claimant expecting a child and had her HB restricted until the child is born?
3. Is the claimant a single person under 35 who is expecting a child and when child is born would no longer be subject to the shared room rate?
4. Is there a particular reason why the claimant chose to live in this accommodation?
5. Is the property the cheapest available in the area for the household's needs?
6. Does living in the area mean a better chance of retaining or gaining employment?
7. Are they a care leaver who has had a reduction on attaining the age of 22?
8. Does the family have children at a critical point in their education?
9. Does the family have kinship care arrangements?

10. Regard should be given to 'troubled' or other families with social services intervention?
11. Formerly homeless people or ex-offenders should be supported to (re) settle in the community
12. Former Armed Services personnel may need DHP support to help make the transition to civilian life

Discretionary Housing Payment and Council Tax Support Discretionary Hardship Payment

It may be possible for you to apply for additional help with your rent, called a 'Discretionary Housing Payment' (**DHP**), if you are entitled to Housing Benefit.

It may be possible for you to apply for additional help with your Council Tax, called a 'Council Tax Support Discretionary Hardship Payment' (**CTS DHP**), if you are entitled to Council Tax Support.

Who can apply?

Anyone entitled to Housing Benefit where that benefit does not cover the full amount of eligible rent. Or anyone entitlement to Council Tax Support were that support does not cover the full amount of Council Tax liability. If you are unsure whether you can claim, please contact Access Selby contact centre.

Will I get any help?

In order for you to qualify for a DHP/CTS DHP you must make a claim and be able to prove that you genuinely need help with your housing costs. In general there would have to be a combination of factors that you could not influence. This may for example have got you into a situation in which a DHP/CTS DHP for a short time may alleviate.

What DHP/CTS DHPs cannot not pay for

They cannot pay for any of your rent or council tax that benefit cannot normally cover. If you are receiving full benefit covering all your eligible rent and council tax you cannot ask for a DHP/CTS DHP. It cannot pay for your service bills such as water, sewerage, electricity etc... It cannot pay for arrears of rent or Council Tax

How to apply?

Please complete the attached form and either post it back to us or hand it in at the Access Selby contact centre. The addresses are at the top of the form.

How will it be assessed?

A Benefits Officer will assess whether your case can be considered for a discretionary payment and will notify you in writing of his/her decision. In certain circumstances it may also be necessary to arrange for you to visit Access Selby for an interview to assess your case.

You may also be asked to provide additional evidence to verify the statements you make.

How long will the payment be for if the application is successful?

It is likely that any payment will be for a fixed time only, possibly only twelve weeks, but it may be more or less, dependant on your circumstances. The Council only has a limited amount of money to pay out and your payment may cease at any time if this limit is reached.

How are DHPs paid?

If you live in privately rented accommodation, payments will be made with your Housing Benefit payment.

If you rent from the Council then any payment would be made direct to your rent account.

How are CTS DHPs paid?

Payment will be made direct to your council tax account.

What information do I need to put on the Application form?

Please write down in your own words why you believe you require financial assistance with your rent or council tax.

You may wish to indicate:

- 1) Whether you are suffering hardship and if so what that is
- 2) If there are any exceptional or unusual circumstances in your case
- 3) Any action you have already taken to alleviate your difficulty
- 4) Your weekly income and expenditure

Follow the other questions on the form and give as much information and explanation as you can.

You may also wish to provide any other documentary evidence to back up your application (for example a letter from your doctor or maybe evidence of other debts).

What to do when the form is completed ?

Ensure that it is signed and dated. **Do not delay** in sending the application back direct to the Benefits Section. Any delay may count against you when considering your case.

Will I need to come to the Council Offices?

An Officer will contact you if they feel it necessary.

If you require any further help or assistance please contact us either in person at Access Selby, or by telephone on 01757 292155.

DISCRETIONARY HOUSING PAYMENT and COUNCIL TAX SUPPORT
DISCRETIONARY HARDSHIP PAYMENT APPLICATION

Please return to:

By post:

Selby District Council, Benefits Section, Civic Centre, Doncaster Road, Selby, YO8 9FT

In person:

Access Selby, 8-9 Market Cross Shopping Centre, Market Lane Selby YO8 4QA

Tel: (01757) 292155

Full Name: _____

Benefit Ref: _____

Address: _____

I need financial help with my rent and/or Council Tax.

The reasons are as follows: -

I declare that the information given on this and attached sheets is true and complete.

I undertake to notify the Benefits Section immediately should any of my circumstances change.

Signature.....Date.....

Please answer the following questions as fully as you can:

Please indicate if you are asking for help with your: **Rent / Council Tax / Both**

(If you rent from a private landlord)

1) *Did you check the Local Housing Allowance rates prior to taking the property?*

If yes, how did you expect to pay the difference?

If not, why not?

(If you rent from a private landlord)
2) Have you tried to negotiate a lower rent with your landlord?
If yes, what was the outcome?

If not, why not?

3) Have you considered or tried moving to cheaper accommodation?

If not, why not?

4) Could relatives or friends or anyone else in the household assist financially?

(If you rent from a private landlord)
5) How much notice are you required to give and how much notice does your landlord have to give you?

- 6) Do you or a member of the family have any health problems or disabilities?

Do these affect the type of property you need or the area you need to live in?
- 7) Do you have any capital, savings or other resources that may tide you over for a while?
- 8) Are you currently in arrears with your rent or council tax? Please give detail of the period and amounts.
- 9) If there are arrears of rent or council tax, please give details. Has your landlord or the council contacted you about the arrears. If so what have they said?
- 10) How much of the shortfall in rent or council tax can you afford to pay each week?
- 11) What action will you take should your application be unsuccessful?
- 12) Please continue on a separate sheet if there is any further information you wish to give in support of your application.
- 13) Please provide the following information about your income and expenditure in support of your application. You may be required to provide documentary evidence for any of the following.

Statement of Weekly Expenditure

	Amount	How often paid?	Do you owe any payments?		How much?
			YES	NO	
Rent	£				£
Council Tax	£				£
Gas	£				£
Electric	£				£
Water Rates	£				£
Home Phone	£				£
Mobile Phone	£				£
Car Tax	£				£
Car Insurance	£				£
Travel (to work etc)/Fuel	£				£
Insurance Policies	£				£
Private Pension payment	£				£
TV Licence	£				£
Maintenance Payments	£				£
Catalogue/Store Card etc	£				£
Credit Card (s)	£				£
Magistrates Court Order Fines	£				£
Satellite or Cable Rental	£				£
School Meals	£				£
Clothing	£				£
Household (Food/Toiletries etc)					
TOTAL	£				£

Loans – Name of Lender	Amount of Loan	Completion Date	Payment Amount	Weekly/Monthly etc
	£		£	
	£		£	
	£		£	
	£		£	

Weekly Income

Income	You	How often paid	Partner	How often paid
Wages/Salary	£		£	
Income Support/JSA	£		£	
Child Benefit	£		£	
Working Tax Credit	£		£	
Child Tax Credit	£		£	
Maintenance	£		£	
Bereavement Benefit	£		£	
Annuity Income	£		£	
Charitable Payments	£		£	
State Retirement Pension	£		£	
Pension Credit	£		£	
Private/Works Pension	£		£	
Incapacity Benefit	£		£	
Employment & Support Allowance	£		£	
Disability Living Allowance	£		£	
Attendance Allowance	£		£	
Maternity Allowance	£		£	
Sick Pay	£		£	
Rent from Lodger/Tenant	£		£	

Other rental income	£		£	
Student Loan/Grant	£		£	
Income from other adults	£		£	
War Disablement Pension	£		£	
War Widows Pension	£		£	
TOTAL				

Bank Accounts:			
Bank	Account Number:		Balance £
Investments:			
Provider	Name of Investment:		Amount £
Any other income not listed above:			
	£		£
	£		£
	£		£
	£		£
	£		£
TOTAL:	£		£

I declare that the information given in this form is true and complete.

I undertake to notify the Benefits Section immediately should any of my circumstances change.

Signature.....Date.....

Please post the form or hand it in to the address on the front page

To: Policy Review Committee
Date: 17th December 2013
Author: Rob Helm
Lead Officer: Dean Richardson

Title: Draft Contaminated Land Strategy

Summary: This new Contaminated Land Strategy 2013 – 2018 for the Selby District draws on current regulations and guidance along with good practice in dealing with land which may, by virtue of its past use, be contaminated with material which poses a risk to human health or may have a detrimental effect on the environment. The strategy sets out options and resources required to discharge the Council's statutory duties under Section 78A (2) of the Environmental Protection Act 1990 & Regulation 5(1) of the Radioactive Contaminated Land (Modifications of Enactments) (England) Regulations 2006.

Through this strategy the Council sets out how sites will identified and prioritised and how land will be dealt with if it is felt that harm is being caused or a significant possibility of harm is likely to be caused.

This Contaminated Land Strategy proposes these key outcomes:

- To improve and protect the condition of the environment and the health of residents in the district
- To meet the statutory obligation placed on the council to produce a written strategy under Part 2A.
- To encourage the redevelopment of brownfield sites.
- To ensure that a strategic approach is used for dealing with contaminated land.
- To ensure that remedial action is reasonable, practicable, effective and durable.
- To encourage voluntary remediation.

Recommendation:

To consider the draft Contaminated Land Strategy 2013-18

Reason for recommendation

The Council has a statutory duty to: -

- Cause their area to be inspected for contaminated land;
- Determine whether any particular site meets the statutory definition of contaminated land and what if any, remediation is required;
- Act as the enforcing authority for all contaminated land within the District, unless the site meets the definition of a “special site”, in which case the Environment Agency will act as the enforcing authority.

1. Introduction and background

- 1.1** Contaminated land is a national issue and is commonly associated with the historic use of sites for industrial or agricultural purposes. Currently, we have identified 1,440 sites which may have sources of contamination by virtue of their past use.
- 1.2** Contaminants, although present, often present no harm to humans or other receptors as they are held in the ground; are not detrimental to health and/ or have no pathway to cause harm.
- 1.3** However, some contaminants do become a risk for harmful exposure if they are able to be inhaled, ingested or come into contact with people, property, water courses or ground water. It is these sites that may require some form of remediation or mitigation.
- 1.4** The strategy, if approved, will address how sites are handled within the District and formalise the Council's approach to identifying, investigating and remediating sites.

2. The Report

- 2.1** Along with the strategy the Council should consider a number of consequential impacts of contaminated land sites within the district. These include:
- Dealing with land other than through the planning process. Although the Council's preferred route for investigation and remediation will be through the development process, the Council has a statutory duty to deal with sites appearing on its contaminated land prioritisation list. This would require funding to investigate and potentially remediate sites if it is evident that there is a risk of harm to people, property or the environment.
 - Financial costs to the Council from sites investigation / remediation. Whilst the Council can seek recovery from the polluter (if they are known or are still in existence) or the land owner, some sites may either be owned or have been operated by the Council or may have no liable person(s) from whom the council can recover its expenses.

Therefore, the Council could have to meet the full cost of investigation and / or remediation. Often, the costs of these investigations are not known at the outset as costs depend to an extent on the nature of the material found, ground conditions and a number of local factors. This means that there is a financial risk in undertaking investigations, which may be hard to quantify at the outset of works. Where possible DEFRA grant funding will be applied for to assist to meet the costs of investigation and remediation if required.

- Potential blight of land or property if they are formally identified as “contaminated” sites. The Council is obliged to maintain a public record of sites which have been formally identified as contaminated under Part 2A of the Environmental Protection Act 1990. This may cause distress or financial loss to owners or residents whose property has been formally identified as contaminated.

2.2 Following consideration of the Council’s duties toward contaminated land under the relevant Acts, the Council in 2006 decided to remove the Contaminated Land Officer post from the structure and commission ad hoc assistance when required. The Contaminated Land Strategy review provides the Council the opportunity to review how this service / requirement is delivered.

There are several possible approaches to overcome this issue which include:

- Buy in specialist consultancy services from outside the organisation;
- Train staff to be able to develop the skills to do this work in-house;
- A mixed approach, where a member or members of staff are trained to do lower level tasks and specialist advice is bought in to carry out the high level or more technical work.

2.3 It is likely that any works carried out to discharge this statutory duty will progress slowly. It is envisioned that due to resource impact it may be possible to investigate and remediate only one site per year to eighteen months. Sites will be addressed in a prioritised order based on risk as determined by the Council’s prioritisation list (a revised version of which will be generated in 2014). It is suggested that any sums recovered from polluters or land owners as sites are remediated should be made available to offset costs incurred.

2.4 A consultation process is currently underway. It commenced on the 25th November 2013 and will finish on the 3rd January 2014 (four weeks) to peer review the strategy. This involves seeking the views of neighbouring authorities and interested stakeholders these include:

- City of York Council
- Department for Environment, Food & Rural Affairs (DEFRA)
- Doncaster Metropolitan Borough Council

- East Riding of Yorkshire Council
- English Heritage (Yorkshire Region)
- Environment Agency
- Harrogate Borough Council
- Leeds City Council
- Local Planning Authority
- Natural England (York Office)
- North Yorkshire County Council
- Public Health England
- Wakefield Council

Consultation is restricted to listed statutory consultees. Consultation with the public or land owners is not planned.

2.5 It is important to note that this document sets the strategic approach to the management of potentially contaminated sites in the District until 2018.

2.6 The new time line for the Contaminated Land Strategy is as follows:

Action	Meeting	Date
Draft Strategy	Executive Briefing	21 st November 2013
Consultation	4 week period	25 th November – 3 rd January 2014
Draft Strategy	Policy Review	17 th December 2013
Strategy	Executive Briefing	20 th February 2014
Strategy	Executive	6 th March 2014

3. Key Policy Issues

The Contaminated Land Strategy and any subsequent implementation will help the Council and its partners meet the '5 Big Things' by contributing to; Stronger Council.

4. Legal/Financial Controls and other Policy matters

4.1 Legal Issues

The Contaminated Land Strategy meets the Council's requirement to have a written strategy detailing the Council's approach to dealing with Contaminated Land within the District.

4.2 Financial Issues

No revenue allowance has been allocated to this work. It is likely that as sites are investigated costs will be incurred these will be dealt with by bids for funding as they are identified on a case by case basis.

5. Conclusion

The new Contaminated Land Strategy will provide opportunities for the council to meet its corporate priorities; creating a stronger Council and would support the Council to discharge its statutory duty to set a structured approach to investigating (and where necessary remediating) contaminated land within the District.

6. Background Documents

Draft Contaminated Land Strategy 2013

Contact Officer: *Dean Richardson*
Business Manager
Selby District Council
drichardson@selby.gov.uk

Rob Helm
Business Transformation Officer
Selby District Council
rhelm@selby.gov.uk



Contaminated Land Strategy

2013 – 2018

Selby District Council
Civic Centre
Doncaster Road
Selby
YO8 9FT

Tel: 01757 705101

Email: info@selby.gov.uk

Web: www.selby.gov.uk

EXECUTIVE SUMMARY

England has a considerable legacy of historical land contamination involving a very wide range of substances, such as heavy metals, petroleum hydrocarbons, polycyclic aromatic hydrocarbons, solvents, acids, asbestos and hazardous gases.

On all land there are background levels of substances, including substances that are naturally present as a result of our diverse geology and substances resulting from diffuse human pollution. On some land there are greater concentrations of contaminants, often associated with industrial use and waste disposal. In a minority of cases there may be sufficient risk to health or the environment for such land to be considered contaminated land.

Selby District Council is responsible for the enforcement of contaminated land legislation in the district. It aims to protect people, property and the environment from contaminants in the ground and encourage the brownfield regeneration of contaminated sites.

This strategy will be implemented over the next five years. It explains how the Council will inspect the district for contaminated land and how it will deal with land which is found to be contaminated. It is envisaged that this strategy will help the Council to improve and protect the health of residents in the district and the condition of the environment.

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1. INTRODUCTION

1.1 Regulatory Context

The contaminated land regime is set out in Part 2A of the Environmental Protection Act 1990 and is commonly referred to as “Part 2A”. It was introduced in April 2000, and gives specific legal powers to local authorities to identify and deal with contaminated land. The regulations were widened in 2006 to include land contaminated by radioactivity.

Part 2A provides a means of investigating and, if necessary, remediating land to ensure that it is suitable for its current use and does not present an unacceptable risk to human health, controlled waters, ecological systems, crops, livestock, buildings and property.

The government has produced statutory guidance, in accordance with Section 78YA of the Environmental Protection Act 1990, which is legally binding and must be followed by enforcing authorities. In April 2012, the Secretary of State for Environment, Food and Rural Affairs issued new contaminated land statutory guidance to explain how Part 2A should be implemented and the legal tests for when land is considered to be contaminated land. Separate statutory guidance covering radioactive contaminated land was also issued in April 2012, by the Secretary of State for Energy and Climate Change.

1.2 The Definition of Contaminated land

The legal definition of contaminated land, as defined in Section 78A (2) (as modified) of the Environmental Protection Act 1990, is:

“any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that

- a) significant harm is being caused or there is a significant possibility of such harm being caused; or*
- b) Significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.”*

Where “harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

The legal definition of contaminated land is slightly different if harm is due to radioactivity, as defined in Regulation 5(1) of The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006:

“any land which appears to the local authority in whose area the land is situated to be in such a condition, by reason of substances in, on or under the land, that

- a) harm is being caused; or*
- b) There is a significant possibility of harm being caused.”*

With regard to radioactivity, “harm” means lasting exposure to any human being resulting from the after effects of a radiological emergency, past practice or past work activity.

In summary, a site can only be determined as contaminated land for one (or more) of the following reasons:

- Significant harm is being caused.
- There is a significant possibility that significant harm could be caused.
- Significant pollution of controlled waters is being caused.
- Significant pollution of controlled waters is likely to be caused.
- Harm attributable to radioactivity is being caused.
- There is a significant possibility that harm attributable to radioactivity could be caused.

1.3 Contaminant Linkages

For a relevant risk to exist there needs to be one or more contaminant-pathway-receptor linkages (contaminant linkages) by which a relevant receptor might be affected by the contaminants in question. In other words, for a risk to exist there must be contaminants present in, on or under the land in a form and quantity that poses a hazard, and one or more pathways by which they might harm people, the environment, or property; or significantly pollute controlled waters.

Figure 1.1: Contaminant Linkage



A “**contaminant**” is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, significant pollution of controlled waters, or harm attributable to radioactivity. Please see Appendix 1 for a list of possible sources of contamination.

A “**receptor**” is something that could be adversely affected by a contaminant e.g. a person, an organism, an ecosystem, property, or controlled waters. Please see Appendix 3 for a list of the receptors covered by Part 2A.

A “**pathway**” is a route by which a receptor is or might be affected by a contaminant e.g. the ingestion of vegetables grown in contaminated soil. Please see Appendix 2 for a list of possible contaminant pathways.

1.4 The Polluter Pays Principle

An important task of the enforcing authority under the Part 2A regime is to establish who should bear responsibility for remediating a site where there are unacceptable risks from land contamination. In general, this will follow the ‘polluter pays’ principle, where the person who caused or knowingly permitted the contamination will be the appropriate person to cover the cost of remediation. However, if it is not possible to find such a person, the statutory guidance states that the cost may fall to the owner or occupier of the land. In most cases, contaminated land will be voluntarily remediated through the planning system by developers and landowners looking to bring a contaminated site back into beneficial use.

1.5 Planning Regime and Building Regulations

All planning applications have to be considered for potential contamination issues to ensure compliance with the Town and Country Planning Act 1990, the National Planning Policy Framework and the Council’s Local Development Framework. Contaminated land issues that arise through planning applications will be controlled through the planning regime, as opposed to Part 2A.

It is the responsibility of the developer to ensure that a site can and will be made suitable for its proposed future use and that there are no unacceptable risks to human health, the environment, property and/or controlled waters. The developer must carry out site investigation and remediation works as necessary, and the Council will impose planning conditions to this effect.

The vast majority of contaminated land issues in the district are currently dealt with through the planning regime. Many sites have already been investigated and

remediated through this route, so no further action will be required with regard to these sites under Part 2A.

In addition to the planning regime, building regulations (made under the Building Act 1984) require developers to take measures to protect new buildings and their future residents from the effects of contamination. An example of this would be the installation of gas protection measures into properties.

1.6 Other Regulatory Regimes

The Part 2A regime is one of several ways in which land contamination can be addressed. Other legislative regimes include; Environmental Damage (Prevention and Remediation) Regulations 2009, Environmental Permitting (England and Wales) Regulations 2010, Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009.

The statutory guidance states that enforcing authorities should seek to use Part 2A only where no appropriate alternative solution exists. Therefore, Part 2A should not be used where existing legislation may be enforced or where contamination has arisen due to a breach of an existing license or permit.

2. AIMS AND OBJECTIVES

2.1 Aims

The aims of this strategy are:

- To improve and protect the condition of the environment and the health of residents in the district.
- To meet the statutory obligation placed on the Council to produce a written strategy under Part 2A.
- To encourage the redevelopment of brownfield sites.
- To ensure that a strategic approach is used for dealing with contaminated land.
- To ensure that remedial action is reasonable, practicable, effective and durable.
- To encourage voluntary remediation.

2.2 Objectives

The objectives of this strategy are:

- To provide a strategic framework which the Council will use to identify, inspect and determine contaminated land.
- To ensure that development on potentially contaminated land will not be permitted unless evidence has been submitted to show that the possibility, nature and extent of contamination has been properly investigated and assessed and that any remediation measures necessary to deal with the contamination are effective.
- To inspect any sites that come to light as a matter of urgency where there is a risk to human health.
- To outline the Council's procedures regarding powers of entry, liability, cost recovery, special sites and enforcement.

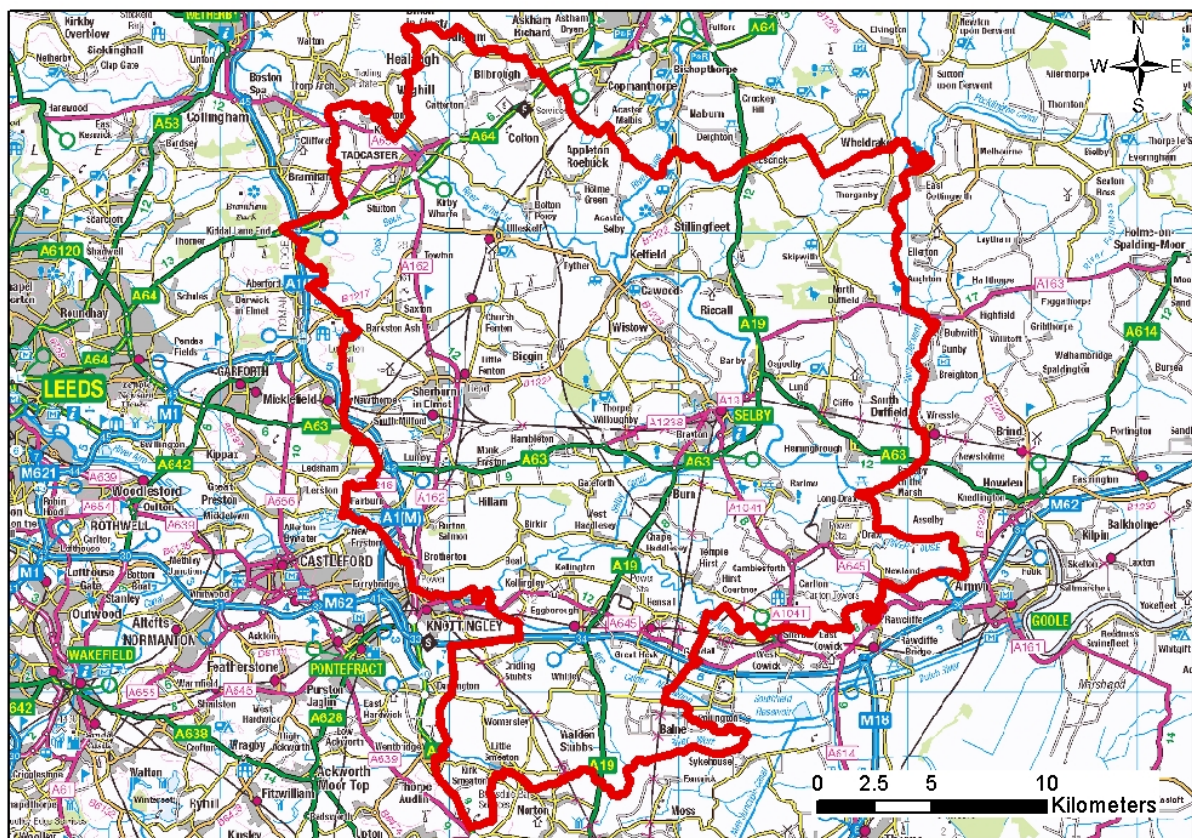
- To prepare written records of determination and risk summaries for land that is found to be contaminated.
- To prepare written statements for land that is not found to be contaminated.
- To maintain a public register of contaminated land.
- To inform the public and stakeholders of the Council's intentions in relation to contaminated land.

3. SELBY DISTRICT

3.1 Characteristics of the Area

The district of Selby covers an area of approximately 600 km² located to the south of York and to the east of Leeds, as shown in Figure 2.1. The Rivers Derwent, Ouse and Aire form the eastern boundary of the Council's area. The A1/A1 (M) approximates the western boundary. The River Went forms the southern boundary. Whereas, the northern boundary runs irregularly from the village of Healaugh in the northwest, to the River Derwent at a point approximately 2km north of Thorganby.

Figure 2.1: Map showing the Selby District Council boundary



The district is primarily a rural area, containing the market towns of Selby and Tadcaster and numerous villages (i.e. Sherburn in Elmet, Riccall, Barlby, Church Fenton and Thorpe Willoughby) and hamlets. The population of the district in 2008 was approximately 83,000, with most of the population centred in the towns and villages.

3.2 Past and Current Industrial Activity

Contamination can arise from a wide variety of processes and activities associated with industry and its development and growth. The industrial history of an area can therefore provide an unparalleled insight into the land which might contain and be affected by contamination.

During the eighteenth and nineteenth centuries the main industries in the district were farming and activities associated with farming e.g. milling, malting, brewing and tanning.

The twentieth century saw the arrival of a number of airfields (at Sherburn in Elmet, Church Fenton, Riccall and Burn), the railways and Selby's shipbuilding industry. Coal mining also took place in the district between the late 1970s and early 2000s.

Deep coal seams underlie the area and the Selby Coalfield was a large-scale deep underground mine complex, with pitheads at Wistow Mine, Stillingfleet Mine, Riccall Mine, North Selby Mine, Whitemoor Mine and Gascoigne Wood Mine. Two associated large coal fired power stations (Eggborough and Drax) are still located within the district and a third (Ferrybridge) is located just beyond the western boundary.

Few industrial activities are located within the district today. The main income for the area is now derived from arable farming and as a commuter area for Leeds, Wakefield and York.

3.3 Geology

The geology of the district comprises Sherwood Sandstone, overlying Magnesian Limestone and Coal Measures. The Sherwood Sandstone outcrops beneath the whole of the district, apart from the far west, where the Magnesian Limestone outcrops and forms an undulating ridge which follows the route of the A1/A1 (M).

Over much of the lower lying areas the bedrock is overlain by silts, clays or sands principally of glacial origin. Extensive areas of alluvial deposits are present along the floodplains of the Rivers Wharfe, Aire, Derwent and Ouse. The most extensive alluvial deposits are around the confluence of the Aire and the Ouse in the south eastern extremity of the district.

3.4 Hydrogeology

Both the Sherwood Sandstone and the Magnesian Limestone (which provides a vital water supply for the brewing industry in and around Tadcaster) are designated by the Environment Agency as principal aquifers and both support a number of

abstractions for potable, agricultural and industrial uses.

At outcrop, or where the aquifers are covered by a permeable sandy drift deposit, the groundwater is vulnerable to pollution by surface activities including areas of contaminated ground. Where the aquifers are covered by a substantial thickness of clay or silt, these will tend to protect the groundwater from surface activities.

There are over 200 licensed groundwater abstractions in the district and the majority of these are for agricultural or industrial purposes. There are also a number of wells for potable water abstraction, which form part of a larger well-field for public supply, and 32 private water supplies.

3.5 Hydrology

Four major rivers flow through the district; the River Derwent, the River Aire, the River Wharfe and the River Ouse. These river systems are used as water supply sources and the majority of these abstractions are used for spray irrigation. There are no licensed surface water abstractions for public water supplies.

3.6 Ecological Systems

A number of areas of ecological importance are present within the district; these include 13 Sites of Special Scientific Interest (SSSI), a RAMSAR site, a special protection area, a national nature reserve and a special area of conservation - further details can be found in Table 3.1. The Council will liaise with Natural England prior to undertaking intrusive investigations and remediation works in the vicinity of these areas.

Table 3.1: Areas of Ecological Importance within Selby District

Site Name	Grid Reference	Designation	Characteristic
Derwent Valley	SE678287 - 825757	- SSSI - Special Area of Conservation - National Nature Reserve - Special Protection Area	Represents a classic river profile.
Skipwith Common	SE655373	- SSSI - Special Area of Conservation	Extensive tract of heath land on a spur of glacial sands which forms the watershed between the Lower Derwent and Ouse Valleys.
Burr Close	SE596340	- SSSI	Damp alluvial meadowland.
Tadcaster Mere	SE500430	- SSSI	Central part of a former lake basin.
Kirkby Wharfe	SE510400	- SSSI	Area of flood land/marshland.
Stutton Ings	SE485405	- SSSI	A remnant of traditionally managed fen grassland.
Bolton Percy Ings	SE534401	- SSSI	Two unimproved alluvial flood meadows adjacent to the River Wharfe.
Derwent Ings	SE703466 to SE703347	- SSSI	A series of neutral alluvial flood meadows, fen and swamp communities and freshwater habitats lying adjacent to the River Derwent, between Sutton-upon-Derwent and Menthorpe.

Sherburn Willows	SE487325	- SSSI	Magnesium limestone grassland.
Eskamhorn Meadows	SE679242	- SSSI	Five floristically diverse fields supporting unimproved natural grassland on seasonally damp clayey soils.
Forlorn Hope Meadow	SE543717	- SSSI	Unimproved neutral grassland plant community.
Brockadale	SE503714	- SSSI	Narrow steep sided valley of the River Went, which cuts through magnesium limestone rocks of Permian age.
Brockadale	SD594456	- SSSI	Two unimproved alluvial flood meadows adjacent to the River Ouse.
Acaster South Ings	SE594437	- SSSI	Two large alluvial flood meadows adjacent to the River Ouse.

3.7 Scheduled Monuments & Listed Buildings

There are 47 scheduled monuments and 619 listed buildings within the district. The Council will liaise with the planning team and English Heritage as necessary, prior to undertaking intrusive investigations and remediation works in the vicinity of these sites.

3.8 Council Owned Land

The Council owns over 3,000 Council houses and a small number of parks, play areas and open spaces. Other significant land ownership consists of its public car parks and land surrounding its offices, depots and leisure facilities. The Council is also landlord for a small number of industrial units and has a small portfolio of potential development sites.

4. INSPECTION PROCESS

4.1 Information Collection

In order to identify potentially contaminated land, it is first necessary to identify those land uses, past and present, which have the potential to give rise to contamination. It is also necessary to identify relevant receptors, so that contaminant linkages can be assessed in light of the current use of a particular site. The datasets listed in Table 4.1 have been collated for this purpose.

Table 4.1: Sources of information

Dataset	Source
Maps (historical & present day)	Ordnance Survey
Past industrial use (1850s, 1910s, 1950s and 1980s)	Landmark Information Group
Closed landfill sites	Environment Agency
Active landfill sites	Environment Agency
Part A and B industrial processes	Selby District Council
Geology	British Geological Survey
Groundwater vulnerability	Environment Agency
Source protection zones	Environment Agency
Groundwater abstraction points	Environment Agency
Watercourses	Environment Agency
Private water supplies	Selby District Council
Sites of Special Scientific Interest	Natural England
Special Protection Areas	Natural England

RAMSAR sites	Natural England
National Nature Reserves	Natural England
Special Areas of Conservation	Natural England
Scheduled monuments	Selby District Council
Listed buildings	Selby District Council

The Council has developed a geographical information system (GIS) and an associated database to store and manage this information, which has enabled potentially contaminated land to be identified.

Any site with a past industrial use or a history of waste disposal (i.e. a closed landfill site) could potentially be contaminated. At present, the Council has identified 1,440 potentially contaminated sites within the district and this list will be updated as new information comes to light. However, it should be emphasised that only a small proportion of these sites are likely to meet the legal definition of contaminated land.

4.2 Prioritisation

Each potentially contaminated site will require detailed inspection in order to establish the presence or otherwise of a contaminant linkage. In accordance with the statutory guidance, the Council should seek to ensure that the most pressing and serious problems are dealt with first. It is therefore necessary to categorise sites into priority order using a rapid assessment of the potential contaminant linkages.

In line with the Council's previous contaminated land strategy, published in 2001, the initial prioritisation of high-risk sites was completed using the Contaminated Land Assessment Risk Analyst (CLARA) model. The prioritised list of sites and the software is currently being reviewed to ensure that developments in this software are incorporated in the Council's approach.

The Council intends to use a sophisticated GIS based prioritisation model, which will rank sites according to their potential contaminant linkages and the associated risk. All 1440 of the potentially contaminated sites will then be reprioritised using this tool.

4.3 Detailed Inspection

The Council will inspect the potentially contaminated sites in priority order, starting with the highest risk site first. The purpose is to gain sufficient information to determine whether or not there is a significant contaminant linkage.

The first phase of investigation is to collect and assess as much information as possible about a particular site from maps and historic records and by undertaking a site walkover survey. If the findings confirm that there is potential for contamination to be present, then further investigation will be required.

The next phase of investigation is to carry out a ground investigation (also known as a site investigation) to determine the nature and extent of any contamination on a site. The sampling and analysis of soil, water and/or ground gases may be required to assess the amount of contamination present. A risk assessment will then be carried out to determine whether it could pose an unacceptable risk to human health, controlled waters, ecological systems, crops, livestock, buildings or property, and whether any significant contaminant linkage exists. Please note that this will be carried out in line with current guidance and best practice.

Within each priority category, land that was previously or is currently owned by the Council will be inspected first, followed by non-Council owned land. This approach will be adopted to allow the Council to set precedents on the identification and remediation of contaminated sites and to demonstrate its commitment to discharging its responsibilities under Part 2A. It is hoped that this approach will be followed by other land owners and encourage the voluntary remediation of sites.

4.4 Determination of Contaminated Land

Once a detailed inspection is complete, the Council should have identified any significant contaminant linkage(s), and carried out a robust, appropriate, scientific and technical assessment of all the relevant and available evidence. The Council can then determine whether or not a site meets the legal definition of contaminated land. Making a determination is a complex process and the Council will refer to the Statutory Guidance on this matter.

However, a site shown to have a significant contaminant linkage may not always be determined as contaminated land under Part 2A. This is because the Council aims to encourage the voluntary remediation of sites through constant interaction and discussions, rather than through a process of naming and shaming individuals or companies. However, if no alternative solutions can be reached, then the site will be determined to ensure that it is dealt with accordingly.

4.5 Remediation

Once a significant contaminant linkage has been identified, and land has been determined as contaminated land, remedial action will be required to reduce or remove that linkage. This may involve cleaning up the contamination, breaking the pathway, or modifying the receptor. The overall aim of remediation is to remedy harm/pollution and to ensure that risks are reduced to an acceptable level.

The Council will consider how land should be remediated and, where appropriate, it will issue a remediation notice to require such remediation to be undertaken.

5. PROCEDURES

5.1 Powers of Entry

For the purposes of identifying contaminated land, the Council has been granted powers of entry under Section 108 of the Environment Act 1995. These powers allow any person authorised in writing by the Council to enter premises and inspect the area and any records connected to the site to determine if significant harm is being caused.

The Council will write to the occupier to give seven days' notice of its intention to enter the premises. It may then enter the premises either with the consent of the occupier or under the authority of a warrant issued by a magistrate.

In an emergency the Council may exercise its powers of entry forthwith to prevent immediate significant harm to public health or the environment, or significant pollution of controlled waters.

5.2 Record of Determination

If the Council determines a site as contaminated land, it shall give notice of that fact to the Environment Agency, the owner of the land, any person who appears to be in occupation of the whole or any part of the land, and each person who appears to be an appropriate person. A written record of determination will be provided to relevant parties and a copy will also be kept on file.

A written record of determination will include:

- A map showing the location, boundaries and area of the land in question.
- A risk summary (including details of the identified contaminant linkages, potential impacts and risks, uncertainties behind the risk assessment and possible remediation options).
- A summary of why the Council considers that the requirements of relevant sections of the statutory guidance have been satisfied

If it is clear, following an inspection, that land does not meet the legal definition of contaminated land, the Council will issue a written statement to that effect to the owners of the property and other interested parties. A copy of this statement will also be kept on file, along with the reasons for making the decision.

5.3 Public Register

The Council is required to maintain a public register containing full particulars of the following matters:

- Remediation notices
- Appeals against remediation notices
- Remediation declarations
- Remediation statements
- Appeals against charging notices
- Designation of 'special sites'
- Notifications of claimed remediation
- Convictions for offences under section 78M of the Environmental Protection Act 1990
- Site specific guidance issued by the Environment Agency
- Other environmental controls

The public register can be viewed online on the Council's website, or viewed in person by prior arrangement at the Council offices. Reasonable charges will be made to cover any photocopying costs.

5.4 Special Sites

For a site to be classified as a "special site" it must meet the criteria outlined in the Contaminated Land (England) Regulations 2006, as summarised in Appendix 4. The regulation of special sites falls to the Environment Agency, but it is the responsibility of the Council to identify and designate these sites before further action can be taken. No site will be designated as a special site without detailed discussions with relevant personnel within the Environment Agency. Where the Council already has information that would allow the classification of a special site, arrangements can be made so the Environment Agency carries out the inspection of the site on behalf of the Council.

Once a site has been designated as a special site, regulation and enforcement are passed onto the Environment Agency.

5.5 Liability

For any land determined as contaminated land, the enforcing authority will need to establish who will bear responsibility for carrying out the remedial work. It is the intention of Part 2A that the appropriate person, ideally the polluter, pays for the cost of remediation, as a result of voluntary or formal action.

For some land, the process of determining liabilities will consist simply of identifying either a single person (either an individual or a corporation such as a limited company) who has caused or knowingly permitted the presence of a single significant contaminant, or the owner of the land. Whereas the history of other land may be more complex, such as a succession of different occupiers or of different industries, or a variety of substances may all have contributed to the problems which have contaminated the land. Numerous separate remediation actions may also be required, which may not correlate neatly with those who are to bear responsibility for the costs. The degree of responsibility for the state of the land may vary widely. Determining liability for the costs of each remediation action can be correspondingly complex.

In line with the statutory guidance, the enforcing authority will undertake a number of tests to decide whether any individuals or corporations should be excluded from liability. Liability can then be apportioned accordingly between the remaining liable parties.

If no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions, the significant contaminant linkage will become an “orphan linkage”. In these instances the enforcing authority has the power to carry out the remediation action itself, at its own cost.

5.6 Cost Recovery

In making any cost recovery decision, the statutory guidance recommends that the following general principles should be followed:

- The enforcing authority should aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers.

- The 'polluter pay' principle should be applied with a view that, where possible, the costs of remediating pollution should be borne by the polluter. The authority should therefore consider the degree and nature of responsibility of the relevant appropriate person(s) for the creation, or continued existence, of the circumstances which lead to the land in question being identified as contaminated land.

The Council will seek to recover all of its reasonable costs. However, it will consider waiving or reducing the recovery of costs to avoid any undue hardship which the recovery may cause to the appropriate person, or to reflect one or more of the specific considerations set out in the statutory guidance.

In certain circumstances, the Council may consider deferring recovery of its costs and securing them by a charge on the land in question. Such deferral may lead to payment from the appropriate person either in instalments or when the land is next sold.

5.7 Enforcement Policy

The Council intends to carry out its responsibilities under Part 2A in a clear and transparent manner. It will endeavour to promote voluntary remediation of sites and will only proceed with enforcement action when all other avenues have been exhausted. However should enforcement action be required, for example due to the failure to fulfil the requirements of a remediation notice, action will be taken in accordance with the Council's enforcement policy.

6. PRIORITY ACTIONS AND TIMESCALES

6.1 Priorities

The Council's current priorities are to:

- Reprioritise potentially contaminated sites using a sophisticated GIS based prioritisation model.
- Inspect potentially contaminated sites in priority order, as budgetary resources, staffing levels and service priorities allow.
- Assess planning applications to ensure that land contamination is investigated and remediated appropriately by developers.
- Deal with any urgent cases as and when they arise.

6.2 Timescales

The strategy does not lend itself to the setting of fixed timescales as the progress of individual sites cannot be accurately predicted. However, considerable progress has already been made since the publication of the original strategy. Certain areas of work, such as developing the GIS and gathering new information on sources and receptors will be on-going.

It is not possible to set a timescale for the determination of contaminated land, but the Council will determine sites as and when they are identified as contaminated land, and will always give due regard to the statutory guidance. There will need to be flexibility in the inspection programme to allow for new information coming to light, as well as changes to legislation, statutory guidance and the allocation of resources.

A significant number of sites identified as potentially contaminated are likely to be suitable for their current use, or have already been dealt with through the planning system and will not require detailed inspection under Part 2A.

7. STRATEGY CONSULTATION AND REVIEW

7.1 Strategy Consultation

In preparing this strategy a number of statutory bodies, adjoining local authorities, internal Council departments and other organisations that may be interested in contaminated land have been consulted. A list of consultees is provided in Table 7.1.

Table 7.1: List of Consultees

Consultee	Contact Details
City of York Council	Environmental Protection Unit City of York Council Eco Depot Hazel Court York YO10 3DS Email: environmental.protection@york.gov.uk
Department for Environment, Food & Rural Affairs (DEFRA)	DEFRA Nobel House 17 Smith Square London SW1P 3JR Email: defra.helpline@defra.gsi.gov.uk
Doncaster Metropolitan Borough Council	Pollution Control Team Doncaster Metropolitan Borough Council Civic Office Waterdale Doncaster DN1 3BU Email: pollution.control@doncaster.gov.uk

East Riding of Yorkshire Council	<p>Environmental Control Specialist Team Housing & Public Protection East Riding of Yorkshire Council Church Street Goole DN14 5BG</p> <p>Email: pollution.control@eastriding.gov.uk</p>
English Heritage (Yorkshire Region)	<p>English Heritage 37 Tanner Row York YO1 6WP</p> <p>Email: yorkshire@english-heritage.org.uk</p>
Environment Agency	<p>Environment Agency Lateral House 8 City Walk Leeds LS11 9AT</p> <p>Email: john.barber@environment-agency.gov.uk</p>
Harrogate Borough Council	<p>Environmental Protection Harrogate Borough Council Springfield House Kings Road Harrogate HG1 5NX</p> <p>Email: environmentalprotection@harrogate.gov.uk</p>
Leeds City Council	<p>Contaminated Land Team Leeds City Council The Leonardo Building 2 Rossington Street Leeds LS2 8HD</p> <p>Email: contaminatedland@leeds.gov.uk</p>

Local Planning Authority	<p>Planning Team Selby District Council Civic Centre Doncaster Road Selby YO8 9FT</p> <p>Email: info@selby.gov.uk</p>
Natural England (York Office)	<p>Natural England 4th Floor Foss House Kings Pool 1-2 Peasholme Green York YO1 7PX</p> <p>Email: enquiries@naturalengland.org.uk</p>
Public Health England	<p>Public Health England Centre for Radiation, Chemicals and Environmental Hazards Environmental Hazards and Emergencies Department Nottingham City Hospital Hucknall Road Nottingham NG5 1PB</p> <p>Email: crcenttingham@phe.gov.uk</p>
Wakefield Council	<p>Land Quality Team Environmental Health Wakefield One PO Box 700 Burton Street Wakefield WF1 2EB</p> <p>Email: customerservices@wakefield.gov.uk</p>

All consultation responses have been carefully considered in the preparation of this strategy. It is also our intention to continue to take contributions from consultees who have not yet made a response and from any other individual or organisation that would like to comment on this strategy. We propose to consider these responses as part of our regular reviews of the strategy.

7.2 Strategy Review

As recommended in the statutory guidance, this strategy will be reviewed every five years to ensure that it remains up to date and relevant.

8. ACCESS TO INFORMATION

8.1 Viewing the Contaminated Land Strategy

This strategy is available to download free of charge from the Council's website. A paper version is also held at the Access Selby office below and can be viewed during normal office hours.

8.2 Viewing the Public Register

A public register detailing regulatory activity on contaminated land can be viewed on the Council's website. A paper version is also held at Selby District Council offices and can be viewed during normal office hours.

8.3 Enquiries

Requests for information and enquiries regarding contaminated land can be made by telephone, e-mail, or in writing. The Council has a policy to respond to all such requests within 10 working days. Please note that there may be a charge to cover our costs to reply to some kinds of query, but you will always be advised in advance if there is a charge.

Please note that circumstances may arise where specific information cannot be released due to commercial confidentiality or where legal action is required to enforce a remediation notice.

Enquiries should be directed to:

Access Selby,

8-10 Market Cross,

Selby,

YO8 4JS

Tel: 01757 705101

Email: info@selby.gov.uk

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The Contaminated Land (England) (Amendment) Regulations 2012. Statutory Instrument (SI 2012/263).

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The Environmental Damage (Prevention and Remediation) Regulations 2009. Statutory Instrument (SI 2009/153).

Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009. Statutory Instrument (SI 2009/3104).

GLOSSARY

This document uses a number of terms which are defined in Part 2A or in the statutory guidance. The meanings of the most important of these terms are detailed below, and where appropriate, a reference to the relevant section of Part 2A has been included.

#

Appropriate Person	<p>Defined in Section 78A(9) as:</p> <p>‘Any person who is an appropriate person, determined in accordance with Section 78F, to bear responsibility for any thing which is to be done by way of remediation in any particular case.’</p>
Contaminant	<p>A substance which is in, on or under the land and has the potential to cause significant harm or significant pollution of controlled waters.</p>
Contaminant Linkage	<p>The relationship between a contaminant, a pathway and a receptor.</p>
Contaminated Land	<p>Defined in Section 78A(2) as:</p> <p>‘Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that;</p> <ul style="list-style-type: none"> a) significant harm is being caused or there is a significant possibility of such harm being caused; or b) Significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.’ <p>OR with respect to radioactive contamination it is defined as:</p> <p>‘Any land which appears to the local authority in whose area the land is situated to be in such a condition, by reason of substances in, on or under the land, that;</p> <ul style="list-style-type: none"> a) harm is being caused; or b) there is a significant possibility of harm

	being caused.'
Controlled Waters	Has the same meaning as in Part III of the Water Resources Act 1991, and includes relevant territorial waters, coastal waters, inland freshwaters and ground waters. Except that "ground waters" does not include waters contained in underground strata but above the saturation zone.'
Ecological Systems	<p>Only the following ecological systems can be considered for the purposes of Part 2A:</p> <ul style="list-style-type: none"> • A site of special scientific interest • A national nature reserve • A marine nature reserve • An area of special protection for birds • A "European site" within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010 • Any habitat or site afforded policy protection on nature conservation (i.e. candidate Special Areas of Conservation, potential Special Protection Areas and listed RAMSAR sites); or • Any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.
Enforcing Authority	Special sites will be enforced by the Environment Agency and all other contaminated land sites will be enforced by the local authority in whose area the land is situated.
Environment Agency	An executive non-departmental public body (responsible to the Secretary of State for Environment, Food and Rural Affairs) which aims to protect and improve the environment and to promote sustainable development.
Geology	The study of the structure of rocks, minerals and soils in specific geographical areas.
Harm	<p>Defined in Section 78A(4) as:</p> <p>'Harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes</p>

	<p>harm to his property.'</p> <p>OR with respect to radioactive contamination is defined as:</p> <p>'Lasting exposure to any person being resulting from the after effects of a radiological emergency, past practice or past work activity.'</p>
Hydrogeology	The study of the occurrence, distribution, movement and properties of water through rock beneath the ground.
Hydrology	The study of the occurrence, distribution, movement and properties of surface water.
Orphan Linkage	A significant contaminant linkage where no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions. In these instances the enforcing authority has the power to carry out the remediation action itself, at its own cost.
Part 2A	Part 2A of the Environmental Protection Act 1990.
Pathway	A route by which a receptor is being / could be exposed to, or affected by, a contaminant.
Pollution of Controlled Waters	<p>Defined in Section 78A(9) as:</p> <p>'The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.'</p>
Prioritisation	The process of scoring sites based on the potential contaminants, pathways and receptors. This creates a prioritised list of potentially contaminated sites, which can then be inspected in priority order.
Property	<p>Only the following property can be considered for the purposes of Part 2A:</p> <p>a) Property in the form of:</p> <ul style="list-style-type: none"> i) crops, including timber; ii) produce grown domestically, or on allotments, for consumption; iii) livestock; iv) other owned or domesticated

	<p>animals;</p> <p>v) wild animals which are the subject of shooting or fishing rights.</p> <p>b) Property in the form of buildings. For this purpose, “building” means any structure or erection, and any part of a building including any part below ground level, but does not include plant or machinery comprised in a building, or buried services such as sewers, water pipes or electricity cables.</p>
Public Register	Register maintained by the Council of particulars relating to contaminated land.
Receptor	Something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters.
Remediation	Removing identified significant contaminant linkages, or permanently disrupting them, to ensure that they are no longer significant and that risks are reduced to an acceptable level. Remediation may involve a range of treatment, assessment and monitoring actions to secure the overall clean-up of the land.
Remediation Notice	Defined in Section 78E(1) as a notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.
Remediation Statement	In any case where the enforcing authority is precluded from serving a remediation notice, the responsible person shall prepare and publish a “remediation statement”. The document will detail what remediation actions are being / have been / are expected to be done, appropriate timescales and the name and address of the responsible person.
Risk	A combination of the probability / frequency of occurrence of a defined hazard and the magnitude (including the seriousness) of the consequences.
Significant Harm to Human Health	The following health effects should always be considered to constitute significant harm to human health: death, life threatening diseases

	(e.g. cancers), other diseases likely to have serious impacts on health, serious injury, birth defects, and impairment of reproductive functions.
Significant Possibility	The decision on whether the possibility of significant harm / pollution being caused is significant is a regulatory decision to be taken by the relevant enforcing authority. Decisions will be made in line with the statutory guidance.
Special Site	<p>Defined by Section 78A(3) as:</p> <p>‘Any contaminated land –</p> <ul style="list-style-type: none"> a) which has been designated as such a site by virtue of section 78C(7) or 78D(6)...; and b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4)...’ <p>See Appendix 4 of this document for further details.</p>
Substance	<p>Defined in Section 78A(9) as:</p> <p>‘Any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.’</p> <p>OR with respect to radioactive contamination is defined as:</p> <p>‘Whether in solid or liquid form or in the form of a gas or vapour, any substance which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210.’</p>

APPENDIX 1: CONTAMINANT SOURCES

The following historic activities are known to produce contamination and could therefore give rise to land contamination. Please note that this list is for guidance only and is not exhaustive.

- Smelters, foundries, steel works, metal processing & finishing works
- Coal & mineral mining & processing, both deep mines and opencast
- Heavy engineering & engineering works, e.g. car manufacture, shipbuilding
- Military/defence related activities
- Electrical & electronic equipment manufacture & repair
- Gasworks, coal carbonisation plants, power stations
- Oil refineries, petroleum storage & distribution sites
- Manufacture & use of asbestos, cement, lime & gypsum
- Manufacture of organic & inorganic chemicals, including pesticides, acids/alkalis, pharmaceuticals, solvents, paints, detergents and cosmetics
- Rubber industry, including tyre manufacture
- Munitions & explosives production, testing & storage sites
- Glass making & ceramics manufacture
- Textile industry, including tanning & dyestuffs
- Paper & pulp manufacture, printing works & photographic processing
- Timber treatment
- Food processing industry & catering establishments
- Railway depots, dockyards (including filled dock basins), garages, road haulage depots, airports

- Landfill, storage & incineration of waste
- Sewage works, farms, stables & kennels
- Abattoirs, animal waste processing & burial of diseased livestock
- Scrap yards
- Dry cleaning premises
- All types of laboratories
- Burial sites and graveyards
- Agriculture – specifically the excessive use or spills of pesticides, herbicides, fungicides, sewage sludge & farm waste disposal
- Naturally occurring contamination

APPENDIX 2: CONTAMINANT PATHWAYS

The following pathways may create linkages between contaminants in the ground and relevant receptors. Please note that this list is for guidance only and is not exhaustive.

- Ingestion of soil and dust
- Ingestion of vegetables & soil attached to vegetables
- Inhalation of indoor & outdoor dust
- Inhalation of indoor & outdoor vapours
- Dermal contact with soils and dusts
- Risk of fire / explosion
- Migration of soluble or mobile contaminants into groundwater
- Migration of soluble or mobile contaminants into surface water bodies
- Surface run-off into surface water bodies
- Permeation through water pipes
- Impact on areas of ecological importance
- Impact on crops or domestically grown produce
- Impact on livestock and wild animals subject to shooting / fishing rights
- Impact on buildings and / or foundations

APPENDIX 3: RECEPTORS

The following receptors are covered by Part 2A. For further details, and information on what constitutes significant harm to each receptor, please refer to the statutory guidance.

- Human beings

- Any ecological system, or living organism forming part of such system, within a location which is:
 - i) A site of special scientific interest
 - ii) A national nature reserve
 - iii) A marine nature reserve
 - iv) An area of special protection for birds
 - v) Any European site within the meaning of regulation 10 of the Conservation Regulations 1994 e.g. special areas of conservation and special protection areas.
 - vi) Any candidate special areas of conservation or special protection areas
 - vii) Any habitat afforded protection under paragraph 6 of planning policy statement 9 (PPS9) e.g. RAMSAR sites
 - viii) Any nature reserve under section 21 of the National Parks and Access to the Countryside Act 1949

- Property in the form of;
 - i) Crops, including timber
 - ii) Produce grown domestically, or on allotments for consumption
 - iii) Livestock
 - iv) Other owned or domesticated animals
 - v) Wild animals which are the subject of shooting or fishing rights

- Property in the form of buildings. For this purpose “building” means any structure or erection, and any part of a building including any part below ground level, does not include plant/machinery within a building.

- Controlled waters, as defined by the Water Resources Act 1991. Including relevant territorial waters, coastal waters, inland freshwaters and ground waters. For the purposes of Part 2A, ground waters does not include waters contained in underground strata but above the saturation zone.

APPENDIX 4: SPECIAL SITES

A special site is a contaminated land site that is regulated by the Environment Agency instead of the local authority. The definition of a special site as given in the Contaminated Land (England) Regulations 2006 is reproduced below for information only. Reference should be made to the full text of the legislation and statutory guidance for a full legal definition and for details of references where quoted.

'Contaminated land of the following descriptions is prescribed for the purposes of section 78C (8) as land required to be designated as a special site:

- a) land affecting controlled waters in the circumstances specified in regulation 3;
- b) land which is contaminated land by reason of waste acid tars in, on or under the land;
- c) land on which any of the following activities have been carried on at any time;
 - i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal;
or
 - ii) the manufacture or processing of explosives;
- d) land on which a prescribed process designated for central control has been or is being carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;
- e) land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit, where the activity does not solely consist of things being done which are required by way of remediation;
- f) land within a nuclear site;

- g) land owned or occupied by or on behalf of -
 - i) the Secretary of State for defence;
 - ii) the defence Council,
 - iii) an international headquarters or defence organisation, or
 - iv) the service authority of a visiting force, being land used for naval, military or air force purposes;
- h) land on which the manufacture, production or disposal of -
 - i) chemical weapons,
 - ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974 (restriction on development of biological agents and toxins), or
 - iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons) has been carried on at any time;
- i) land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 (arrangements for development etc. of nuclear devices);
- j) land to which section 30 of the Armed Forces Act 1996 (land held for the benefit of Greenwich hospital) applies;
- k) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and
- l) land which -

- i) is adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k); and
- ii) Is contaminated land by virtue of substances which appear to have escaped from land of such a description.'



Report Reference Number PR/13/13

Agenda Item No: 7

To: Policy Review Committee
Date: 17th December 2013
Author: Julia Jennison
Lead Officer: Karen Iveson – Executive Director

Title: Asset Transfer Policy

Summary: This Policy allows for consideration of the Transfer of Assets from Selby District Council to Selby and District Housing Trust (the Housing Trust).

Recommendation:

To consider the draft Asset Transfer Policy and provide comments to feed into the consultation process.

Reasons for recommendation

To progress the development of the Asset Transfer Policy, which will assist with delivery of the Housing Development Strategy, by allowing consideration of Council assets for possible transfer to the Housing Trust. These assets would be developed to help deliver additional affordable housing in the district.

1. Introduction and background

- 1.1 There are a number of existing plans and strategies which provide the framework for asset transfer within the context of Selby District Council (SDC)'s strategic aims.
- 1.2 The policy has made particular reference to the aims and processes set out in the Asset Management Strategy 2010-15, and takes account of other plans/strategies; Housing Revenue Account (HRA) Business Plan 2012-17, and Empty Homes Strategy 2013-16.
- 1.3 The Housing Development Strategy 2013 sets out the Council's plans to contribute to the development of additional affordable housing in the district,

concentrating on the contribution it can make itself. It identifies two mechanisms for the Council to increase its affordable housing stock which will deliver additional affordable homes across the district, initially concentrating on the opportunities provided by using Council owned land.

- 1.4 Building on these plans and strategies, this Asset Transfer Policy will provide the framework for consideration of when transfer to the Housing Trust would be beneficial to the Council's vision and objectives.

2. The Report

- 2.1 The Asset Transfer Policy sets out guidance as to when assets may be considered for transfer, and an evaluation process to ensure that the justification for disposal set out in the Asset Management Strategy is met.
- 2.2 It will enable the transfer of SDC owned buildings, land or void housing subject to individual business cases and the relevant approvals.
- 2.3 All assets are re-valued every 5 years, with a desktop revaluation every year, through the Asset Value Survey; this will provide an opportunity to consider possible transfer.
- 2.4 In addition, assets may be reviewed at other times such as to enable a particular scheme or project to progress, or when HRA housing stock comes void.
- 2.5 Once a potential opportunity has been identified, the business case will dictate the best way forward, and establish whether or not transfer to the Trust is appropriate.
- 2.6 For void housing stock, it may be practical to identify certain types of hard to let or low demand units (for example by unit size, or by specified locations in the district) where transfer might be considered, in order to avoid the necessity for consideration of each individual property as it comes void. This would reduce delays in re letting (existing HRA stock or as new lets through the Housing Trust dependent on the outcome) to potential residents in need of housing, and minimise the loss of income.
- 2.7 For other assets this may not be so critical, and review would generally be led by the periodic asset value survey.
- 2.8 The diagram at 4.3 of the Policy shows the process by which these development mechanisms would be considered, and should be read alongside the flowchart at 5.2.
- 2.9 An Evaluation sheet is provided to align with the requirements of the Asset Management Strategy, and a checklist is provided at 5.11.
- 2.10 Criteria are set out under which individual business cases would be worked up, and the framework provided will ensure full consideration by officers and

Members, and fit with the processes laid out in the Asset Management Strategy.

- 2.11 Any transfers to the Trust would be by means of private sale subject to the relevant authority and consents. As part of a business case the Council may impose conditions, covenants, buy-back clauses, overage clauses and any other terms or conditions upon any asset transfer as it considers appropriate.
- 2.12 Most transfers will require Executive approval as a key decision, whether the asset sits in the HRA or General Fund. In addition, various central government consents may be needed according to the type of land/asset.
- 2.14 Each case will need to be fully evaluated to ensure risk is minimised, but risks which the Council will need to take into consideration include;
- any longer term opportunity which might be provided by the asset, including possible ransom strip or strategic transfers;
 - the financial impact on the HRA of the Council reducing its housing assets, or on the General Fund;
 - the impact on the practical management arrangements for its housing stock;
 - any economies of scale relating to housing management;
 - ensuring that opportunity is taken to protect any long term interest in the asset in the terms of the transfer/disposal;
 - emerging projects considered by different teams;
 - In terms of Council housing stock, the emerging Right to Transfer (Autumn 2013) will give tenants the right to the transfer of their homes to a Housing Association (Registered Provider). If this were to happen, the Council may no longer have individual homes to transfer to the Trust.
- 2.15 The potential benefits are:
- The policy will enable additional affordable housing to be developed to meet housing need in the district – a priority identified in the Corporate Plan;
 - Redevelopment of obsolete, hard to let or low demand property will allow the Council to achieve efficiency and added value from its asset base;
 - It will help to safeguard existing affordable homes for those in need;
 - It provides the opportunity to help the Council sustain the HRA through external property management;
 - And through the additional redevelopment work, it will help to provide employment opportunities in the district.

Timescale

2.16 The time line for the progression of the Asset Transfer Policy is scheduled below.

Date	Event	Action
7 November	Executive	Consideration of draft Policy
November - December	Consultation	
17 December	Policy Review	As part of consultation
6 February	Executive	To consider results of consultation and agree recommendation to Council
25 February 2014	Council	Policy Adopted

3. Legal/Financial Controls and other Policy matters

Legal Issues

- 3.1 Ongoing legal advice will be sought to inform our approach to transfers in the policy, and will be required as part of each business case.
- 3.2 Any conditions, covenants, buy back clauses, or other terms or conditions need to be considered in addition to longer term issues such as potential ransom strips.
- 3.3 The Council will need to be clear that the disposal or transfer represents Best Value
- 3.4 Internal and/or external approvals may be required according to the type of land or asset involved.

Financial Issues

- 3.5 The policy provides an additional option at Asset Value Survey in considering the possible reuse of assets.
- 3.6 Financial input will be required as part of each business case.
- 3.7 The Council will need to be clear that the disposal or transfer represents Best Value.
- 3.8 Consideration will be required of the possible impact on the HRA of the Council reducing its housing assets, and of the economies of scale relating to housing management.

4. Conclusion

- 4.1 The Asset Transfer Policy will provide an opportunity for the Council to manage its assets more effectively, whilst assisting the Trust to deliver additional affordable housing in the district in accordance with the Housing Development Strategy.

5. Background Documents

Housing Development Strategy 2013
Asset Management Strategy 2010-15
Housing Revenue Account (HRA) Business Plan 2012-17

Contact Details

Julia Jennison – Policy Officer
jjennison@selby.gov.uk

Appendices

Appendix A – Consultation Draft Asset Transfer Policy 2013

V4 Consultation Draft - Selby District Council Asset Transfer Policy. A Policy for the Transfer of Assets to Selby & District Housing Trust

1 Introduction and Purpose

- 1.1 To enable transfers of land and property to Selby & District Housing Trust (the Housing Trust) in order to make best use of the Council's assets.
- 1.2 The policy will enable the transfer of Selby District Council (SDC) owned buildings, land, void housing or any other assets, subject to individual business cases and the relevant approvals.

2 Policy Context

- 2.1 There are a number of existing plans and strategies which provide the framework for asset transfer within the context of Selby District Council's strategic aims.
- 2.2 **Selby District Council's Corporate Plan 2011-2015**
The Council is committed to achieving five big things for the district:
 - We want to be a stronger council, fighting for our communities and getting everyone working together.
 - We want to change the perception people have of Selby district as a place to live, work, bring up their families and spend their time and their money.
 - We will strive to ensure that people are living well by providing better opportunities for learning, training, jobs, housing and leisure.
 - We want to be confident in our ability to tackle the tough stuff that holds back our potential and that of our communities, and
 - We want to be switched on to what's happening around us, knowing what's important to the people we serve and being fit to deliver it.
- 2.3 Building on these five targets, we launched our **Programme for Growth** in 2012, which focusses on the key issues of new jobs, housing, local infrastructure, retail and leisure.
- 2.4 As part of this programme, an independent Housing Trust has been set up to deliver new and refurbished affordable homes in the district, to meet need, support local construction and increase opportunities for jobs and wealth creation.
- 2.5 Our **Asset Management Strategy 2010-15** provides a plan whereby the Council can balance the investment required with the resources available to achieve the objectives of the Corporate Plan and other Council strategies.
- 2.6 It requires the Council's assets to be managed in the most effective, efficient and economical manner, with the objective to ensure that every opportunity is taken to fully utilise the benefits of assets.
- 2.7 The **Housing Revenue Account (HRA) Business Plan 2012-17** sets out how the Council, as the major landlord in Selby District, plans to manage its stock.

- 2.8 In addition to investing £15m million in our 3,150 homes over the next 5 years, it sets out our commitment to consideration of the wider use of our land and property holdings in the context of the abolition of the old Housing Subsidy System in favour of self-financing.
- 2.9 This will include looking at the opportunities presented either by developing new affordable housing ourselves within the HRA, or by working with the new Housing Trust to enable them to develop affordable homes.
- 2.10 Our **Empty Homes Strategy** 2013-16 identifies the scale of empty homes in Selby district, and explores the approaches and resources required to bring them back into use.
- 2.11 As part of this work, we will review best use of void Council homes and properties, as well as working with the owners of other public and privately owned stock.
- 2.12 An element of funding for the development of affordable homes, either new build or refurbished, will be made available through our emerging planning policies; see below.
- 2.13 The **Core Strategy** was adopted in 2013, Policy SP9 requires all new housing developments to contribute in some way towards meeting housing need, wherever the viability of the development allows. For schemes providing less than 10 dwellings, a commuted sum is required with a target contribution equivalent of up to 10% affordable units.
- 2.14 For schemes providing 10 or more dwellings, in certain circumstances, a commuted sum may be accepted as all or part of the affordable housing contribution (detail is set out in the AHSPD, Appendix 1).
- 2.15 An **Affordable Housing Supplementary Planning Document (AHSPD)** 2013, is being developed to deliver the Core Strategy, which includes the range of approaches, standards and mechanisms required to deliver affordable housing which meets local needs
- 2.16 Contributions received by way of commuted sums will be held in a fund and used to meet the provision of affordable housing in the District in accordance with the S106 requirements for each sum.
- 2.17 The **Housing Development Strategy** 2013, sets out Selby District Council's plans to contribute to the development of additional affordable housing in the district, concentrating on the contribution the Council itself can make.
- 2.18 It outlines two mechanisms for the Council to increase its affordable housing stock; initially concentrating on the opportunities provided by using Council owned land.
- 2.19 Building on these plans and strategies, this Asset Transfer Policy will provide the framework for consideration of when transfer to the Housing Trust would be beneficial to the Council's vision and objectives.

3 Strategic Consideration of Asset Disposal/Transfer

3.1 The Asset Management Strategy (extracts in italics) sets out that:

To manage the assets of the Council effectively, economically and efficiently in a manner which supports the delivery of the Council's Corporate Plan, Access Selby will pursue the following objectives:

- *To ensure the assets are fit for purpose and maintained to the required standard;*
- *To utilise assets in a sustainable way to support the Council's strategic policies;*
- *To work with partners and community groups to maximise the use of assets for the benefit of the local community;*

3.2 *All assets will be periodically evaluated through an **Asset Value Survey** to consider their:*

- *Condition*
- *Suitability – or fitness for purpose*
- *Sufficiency –reflecting both demand for and sustainability of an asset*
- *Net Costs – of running the asset*
- *Accessibility –Firstly linked to the Disability Discrimination Act and the extent to which the asset is accessible to service users and people with disabilities, and secondly concerned with accessibility more generally*
- *Value*

3.3 The asset is re-valued every 5 years with a desktop revaluation every year. Further detail is provided in the Asset Management Strategy.

3.4 In addition to this periodic consideration, assets may be reviewed at other stages, such as to enable a scheme or project to progress, or when HRA housing stock comes void.

3.5 Following review, the strategy may recommend any of the following actions:

- *Re-evaluation of rental value; or*
- *Incentives such as rent free periods, bespoke lease terms outside of the standard lease agreement (such as non-Full Repairing and Insuring leases), short term lets; or*
- *Professional assistance (such as planning advice, legal advice etc); or*
- *Waiving of fees; or*
- *Decorating, repairs and/or alterations*
- *Disposal*

3.6 *Where monitoring or review demonstrates that retention of assets is no longer in the public's interest, for example:*

- *where the costs of maintaining the asset are beyond its market value; or*
- *where the income from the asset is less than could be achieved through other means (such as bank interest on the capital achieved through sale); or*
- *where the sale of the asset would enable alternative assets to be acquired or provide the opportunity for an acquisition*
- *where the asset has ceased to be of use to the Council or Access Selby, but still has a useful life; or*
- *for other justified reason*

consideration may be given to the disposal of the asset.

- 3.7 *Disposal means to sell either*
- *the Council's freehold interest in the land, property or void home or*
 - *to grant a leasehold interest to a buyer with the Council retaining its freehold interest in the land, property or void home.*
- 3.8 *Disposals of assets will be made in accordance with:*
- *statutory provisions;*
 - *Corporate objectives;*
 - *the policies and procedures recorded in the Council's Constitution and this policy document;*
 - *the proper council authority having been obtained*
 - *external consents obtained*

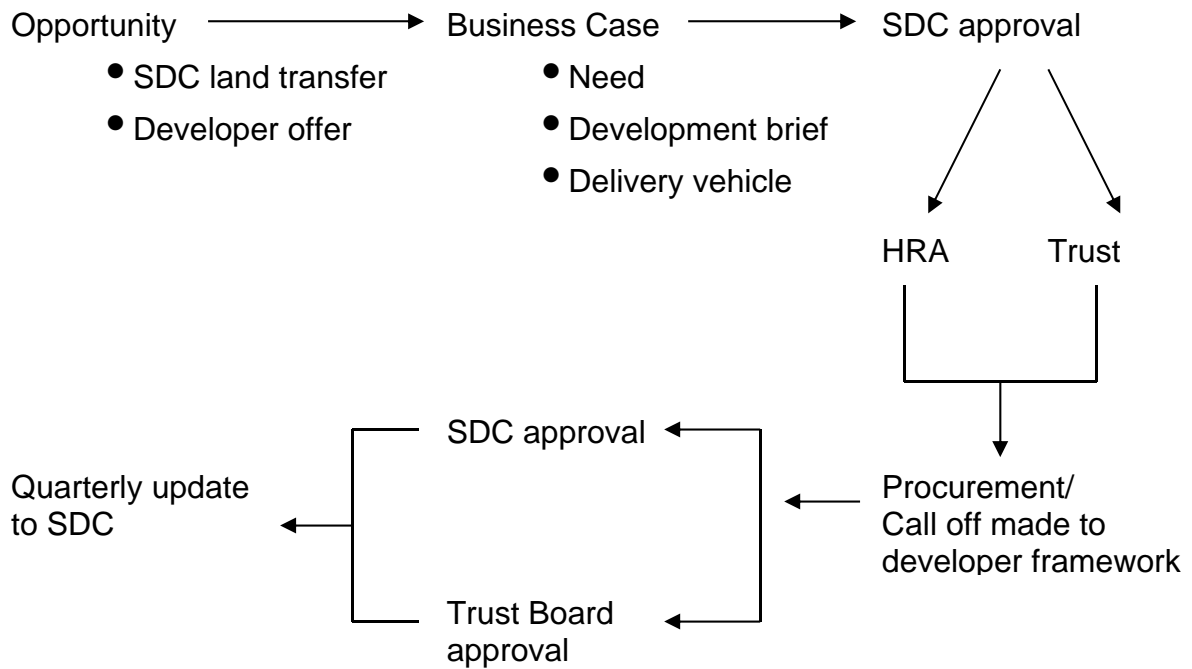
Transfers to the Trust would be by means of private sale.

- 3.9 The asset may be transferred by way of sale or gift to the Trust at less than market value, subject to business case which should include reference to state aid. Where assets are disposed of for less than the best price the Council can achieve, it will only do so in accordance with the guidance set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003.
- 3.10 Where a disposal forms part of a mixed transaction involving the procurement of public "works", "supply" or "services the Council must consider whether the disposal amounts to procurement rather than a simple land transaction in which case the Council's Contract Procedure Rules and EU Procurement Regulations may apply. Legal advice must be sought from the Council's Solicitor.
- 3.11 Conditions may be applied to a sale (the section in italics is from the Asset Management Strategy):
As part of a business case the Council may impose conditions, covenants, buy-back clauses, overage clauses and any other terms or conditions upon any asset transfer as it considers appropriate. Such actions would be placed in the interest of the community, either to ensure best value, or in the interests of public safety/security. Each transfer will be considered on its own merits and any conditions would be agreed as part of the sale prior to conclusion and with the consent of the Secretary of State.

4 **Options**

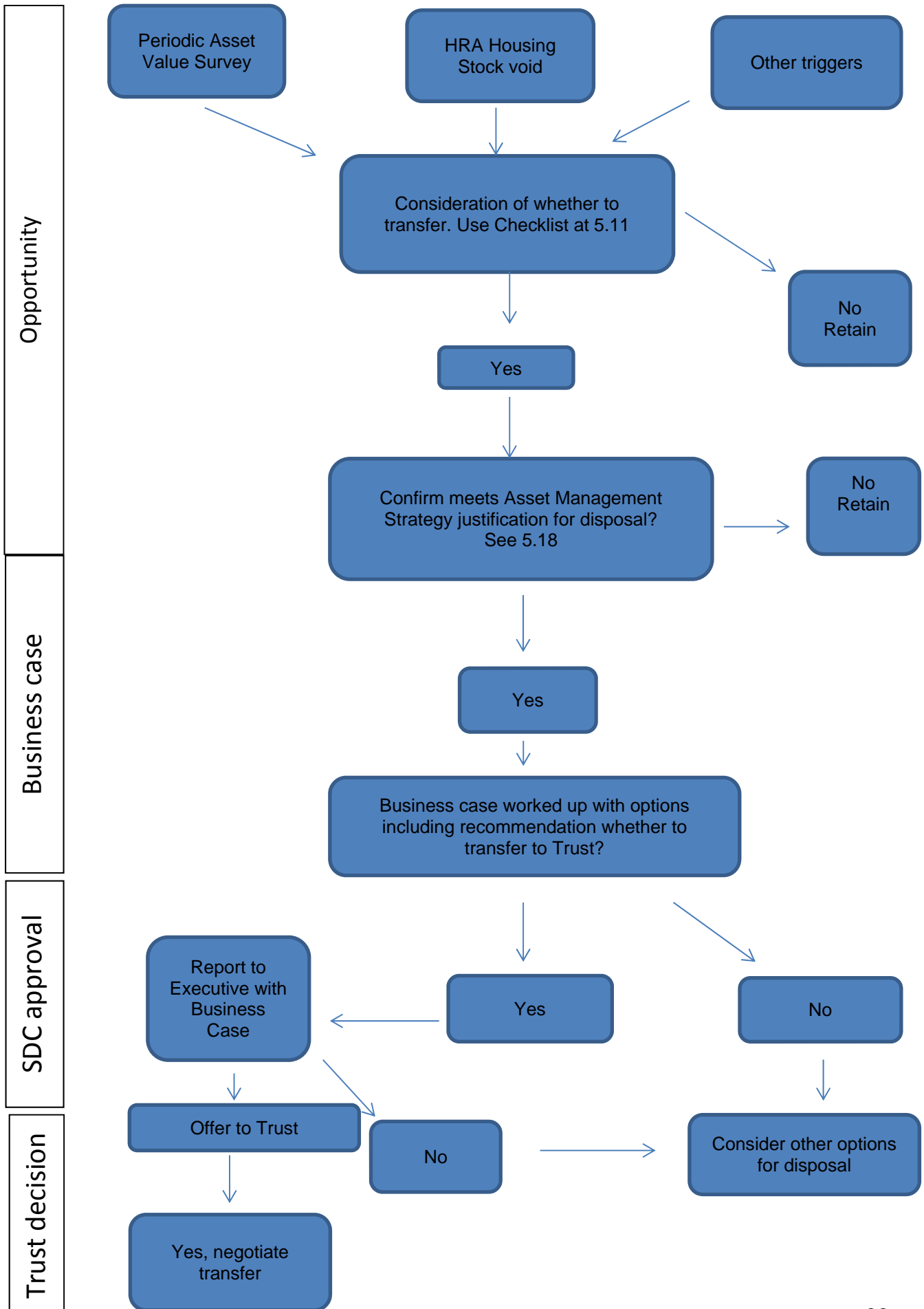
- 4.1 The Council works in partnership with Registered Providers in the district to enable the development of affordable homes to meet identified housing need.
- 4.2 In addition, there are two mechanisms available to the Council to increase affordable housing stock; properties could be
1. developed and financed through the HRA, or
 2. developed through a Housing Delivery Vehicle, Selby and District Housing Trust, established to develop affordable homes in Selby District.
- 4.3 The diagram below shows the process by which these development mechanisms would be considered. Once a potential opportunity has been identified, the business case will dictate the best way forward, and establish whether or not transfer to the Trust is appropriate.

Development Mechanisms



5 Disposal/transfer to the Trust - Issues to consider

- 5.1 Set out in the previous section, taken from the Asset Management Strategy, are the processes by which an asset may be selected for disposal or transfer; either as part of a periodic review, or as a result of a particular trigger. Building on the diagram above, the flowchart below sets out the process.



- 5.3 Criteria must be identified to enable clarification of the reason for the Council initially to consider the asset for disposal. With reference to the Asset Management Strategy, it is likely that the triggers would be:

Periodic Asset Value Survey

- 5.4 *All assets are periodically evaluated (as set out in the Strategic Asset Management Plan) to consider their:*

- *Condition – This considers the physical state of the asset and evaluates the repairs required to keep the asset in continued use. It may be more cost effective to replace an asset outright than to continually repair it.*
- *Suitability – This measure effectively reflects fitness for purpose of an asset and encompasses views of those involved in front line service delivery, and taking into account the needs of service users. It goes beyond condition and is concerned with how well or otherwise the asset is suited to its current purpose.*
- *Sufficiency – This measure reflects both demand for and sustainability of an asset. Sufficiency is concerned with asset use now and in future. It is a crucially important indicator as it helps to identify both under-utilised assets for possible disposal or reconfiguration, and situations where there is a developing risk of over-utilising an asset and the need for additional/alternative assets to meet demand.*
- *Costs – The costs of running the asset must be compared with the revenue it generates.*
- *Accessibility – This covers two distinct areas. The first is linked to the Disability Discrimination Act and the extent to which the asset is accessible to service users and people with disabilities. The second is concerned with accessibility more generally e.g. specialist equipment that can only be utilised by suitably trained staff.*
- *Value – A list of financial values of assets acts as a reliable inventory check and provides accurate, appropriate valuation information to assist in decision making.*

HRA Void Housing Stock

- 5.5 When a home comes void, consideration could be given to whether its continued use should sit with the Council, or whether wider strategic aims might be met by transferring it to the Trust, for instance where major works are required, in order to facilitate wider development, or where the stock of affordable housing needs to be preserved eg where it sits in a rural location where the development of additional affordable housing would be unlikely. For practical purposes, it may be necessary to set out some parameters for this – see 5.8.

Other triggers

- 5.6 Over time it may be established that some assets are low demand, and a reassessment of their use and potential may be appropriate. Ongoing project work or review such as a Stock Condition Survey may flag up the need for a wider consideration of an asset, its use and ownership

General

- 5.7 Initially, the concentration will be on the use of council owned land, and whether it provides opportunities for the development of new affordable housing through the Trust.
- 5.8 For void housing stock, it may be practical to identify certain types of hard to let or low demand units (for example by unit size, or by specified locations in the district) where

transfer might be considered, in order to avoid consideration of each individual property coming void. This would reduce delays in re letting (existing HRA stock or as new lets through the Housing Trust, dependent on the outcome) to potential residents in need of housing, and minimise the loss of income.

- 5.9 For other assets this may not be so critical, and review would generally be led by the periodic asset value survey.
- 5.10 An evaluation sheet should be used to ensure that the requirements of the Asset Management Strategy are met. If at any point it becomes apparent that there is no opportunity for additional affordable housing to be developed through the Trust, the process will cease.
- 5.11 The checklist should include:

Evaluation	Comments	Existing Housing stock
Consideration of current use and possible alternative use, including any planning constraints, flood risk, knowledge of the immediate area		n/a
Does the alternative use provide an opportunity for the Trust to provide affordable housing?		n/a
Cost and best value in proceeding		
Financial issues including potential loss to the General Fund or HRA and repayment of the debt		
Potential to enable other Trust schemes to progress eg adjacent to other Trust landholdings, potential access to sites, ransom strips		
Whether it would be a freehold or leasehold transfer and the advantages/disadvantages of each		
Other Legal issues		
Wider benefit to the community		
Other considerations		

- 5.12 With the benefit of this evidence a Business Case can be made for the transfer/disposal of the asset, and consideration of whether the asset would be suitable for transfer to the Trust. Opportunities should enable the development of affordable housing either directly through the disposal of a void property or the provision of land to build affordable

housing, or indirectly through the transfer of land or property which would enable an affordable scheme to progress.

- 5.13 Where Council owned land is identified for affordable housing development, the type of scheme developed will be led by identified housing need, including evidence from the latest Strategic Market Housing Assessment and the Council's Housing Register. More information can be found in the Councils Affordable Housing Supplementary Planning Document.
- 5.14 Where a decision is made to transfer an asset to the Trust, the valuation will include consideration of whether the transfer should be freehold or leasehold, and include the cost/benefit of each. Reference should be made to Circular 06/03.
- 5.15 As the owner of the asset, the Council will have the opportunity of setting out its requirements of the proposed development in terms of
- the type and size of housing to be developed
 - the development timescale
 - design/quality assurance
 - covenants on land where appropriate
 - overage agreements where applicable
 - option/pre-emption agreements
 - loan agreements where applicable
- 5.16 However, it will not be possible to use a buy-back clause without express approval from the Secretary of State.
- 5.17 Where assets are transferred to the Housing Trust it may be necessary for affordable schemes to be cross subsidised by market housing, and consideration of this option would be considered in the usual way through the planning process, and set out in the business case.
- 5.18 As part of the Business case, *where monitoring or review demonstrates that retention of assets is no longer in the public's interest, for example:*
- *where the cost of maintaining the asset are beyond its market value; or*
 - *where the income from the asset is less than could be achieved through other means (such as bank interest on the capital achieved through sale); or*
 - *where the sale of the asset would enable alternative assets to be acquired or provide the opportunity for acquisition*
 - *where the asset has ceased to be of use to the Council or Access Selby, but still has a useful life; or*
 - *for other justified reason*

this will need to be clearly evidenced.

6 Process

- 6.1 This document has outlined a framework for the above process to ensure full consideration by officers and Members, and fit with the processes laid out in the Asset Management Strategy
Internal approvals.
- 6.2 Most transfers will require Executive approval as a key decision.
- 6.3 The report to Executive will need to set out

1. the reason that the disposal is in the public interest, and
2. a breakdown of the costs of disposal and how these will be funded
3. whether the asset will be replaced and how it will be funded

Officer delegation

- 6.4 Where an asset is valued at less than £15k, directors have delegated powers in consultation with S151 Officer/Solicitor to the Council

External approvals

- 6.5 Various central government consents may be needed according to the type of land/asset.

7 Potential Risks

- 7.1 Risks which the Council will need to take into consideration are;

- any longer term opportunity which might be provided by the asset, including possible ransom strip or strategic transfers
- the financial impact on the HRA of the Council reducing its housing assets, or on the General Fund
- the impact on the practical management arrangements for its housing stock
- any economies of scale relating to housing management
- ensuring that opportunity is taken to protect any long term interest in the asset in the terms of the transfer/disposal
- emerging projects considered by different teams

Each case will need to be fully evaluated to ensure risk is minimised.

- 7.2 In terms of Council housing stock, the emerging Right to Transfer (Autumn 2013) will give tenants the right to the transfer of their homes to a Housing Association (Registered Provider). If this were to happen, the Council may no longer own individual homes which could be transferred to the Trust.

8 Potential Benefits

- 8.1
- The policy will enable additional affordable housing to be developed to meet housing need in the district
 - It will help the Council sustain the HRA through external property management
 - It will provide employment opportunities in the district

ⁱ Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained

ⁱ General Consents 2003 and 2013; Housing and Regeneration Act 2008, Local Government Act 1988

Policy Review Committee Work Programme 2013/14

Date of Meeting	Topic	Action Required
4 June 2013 (Cancelled)	Time of Meetings	To agree a start time for meetings for 2012/13
	Work Programme	To agree the Committee's Work Programme for 2012/13

16 July 2013 (4pm start Mtg Rm 2)	<u>Budget and Policy Framework</u> The State of Area Address (Council 25 June)	To consider the Leader's State of the Area Address.
	<u>Executive Requested items</u> Affordable Housing SPD	To consider the Executive's policy decision from 6 June and offer amendments to the Executive Deferred *Will be considered at a separate meeting*
	<u>Executive Requested items</u> SDC Development Strategy for Increasing Affordable Housing Stock	To consider the Executive's policy decision from 4 July and offer amendments to the Executive
	<u>Committee Requested items</u> Section 106 Policy	To consider the Council's existing policy and offer amendments to the Executive (this is being considered under the Affordable Housing SPD item)

12 September 2013	<u>Executive Requested items</u> Affordable Housing SPD	To consider the Affordable Housing SPD following the consultation
	<u>Budget and Policy Framework</u> Financial Strategy	To consider the Executive's proposals for the Council's long term (10 year), resource and spending framework in which the budget strategy and three year financial plan will be developed.
15 October 2013	<u>Executive Requested items</u> Planning Conditions	To consider on behalf of the Executive motions put to Council from the Labour Group
	<u>Committee Requested items</u> Renewable Energy Strategy	To consider the Council's existing policy and offer amendments to the Executive
	<u>Executive Requested items</u> Welfare Reform – Scoping	To consider what information is requested when the item will be considered at the December 2013 meeting.
17 December 2013	<u>Executive Requested items</u> Welfare Reform	To consider the motion by the Labour Group and any further information requested at the last meeting
	<u>Executive Requested items</u> Contaminated Land Strategy	To consider the Council's existing policy and offer amendments to the Executive

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17 December 2013 <i>Cont'd</i>	<u>Executive Requested items</u> Asset Transfer Policy	To consider the Council's existing policy and offer amendments to the Executive
14 January 2014	<u>Budget and Policy Framework</u> Draft Budget and Medium Term Financial Plan	To consider the Executive's proposals for revenue budgets and the capital programme for 2014/2015.
	<u>Executive Requested items</u> Issues and Options SAPP	To consider the policy and offer amendments to the Executive
	<u>Committee Requested items</u> Renewable Energy Strategy	To consider the Council's existing policy and offer amendments to the Executive
15 April 2014	<u>Constitutional Requirement</u> Policy Review Annual Report 2013/14 and Work Programme 2014/15	To review the Policy Review Annual Report and approve the Draft Work Programme for 2014/15