This document has been prepared to assist and advise management groups of community buildings who are involved in Durham County Council’s Community Buildings Transfer Strategy, especially those who need to provide a contribution towards the cost of the works needed prior to transfer, and particularly those who are responsible for finding more than 51% of the funding required. The document can also be used by all management groups for reference when considering undertaking future repairs, maintenance or alteration works to community buildings.
CONTENTS

1. THE PURPOSE OF THIS DOCUMENT

2. LANDLORD APPROVAL PROCESS

3. DESIGN including Construction, Design & Management Regs.

4. PLANNING APPROVAL

5. BUILDING REGULATIONS APPROVAL

6. ASBESTOS IMPLICATIONS

7. ECOLOGY IMPLICATIONS

8. PROCUREMENT
SECTION 1
THE PURPOSE OF THIS DOCUMENT

People who are not experienced or familiar with the construction industry often consider undertaking the process of procuring repair and construction works themselves. However, what might appear to be a relatively simple process initially can actually be very onerous depending upon the size and complexity of the work. Even small works can place significant responsibility upon individuals or management groups who are deemed to be an Employer or Client in accordance with the law. Therefore, this document seeks to outline in simple terms the various areas that need to be given careful consideration when procuring works to a building, particularly as many management groups will consist mainly of volunteers and they will be taking on responsibility for the repair and maintenance of a council owned building where they will be responsible as the lessee (leaseholder).

It will be necessary for the leaseholder to obtain Landlord Approval from DCC in the first instance before any proposed works are considered. This could include works of a minor nature where the need for landlord approval might not be obvious. The procedure to obtain this approval is included in this document.

Any leaseholder who commissions significant building work is deemed to be a Client in accordance with the Construction (Design & Management Regulations) 2007 (CDM), and as such they have specific legal duties which are onerous and cannot be delegated. One of the main Client duties under CDM is the need to appoint appropriate and competent construction professionals such as Architects, Project Managers, Quantity Surveyors and Structural Engineers etc. as well as appointing competent contractors to undertake work. This legal duty also extends to checking their competency prior to appointment.
The HSE (Health & Safety Executive) guide for Clients is included in this document. A list of other relevant Regulations is also included for reference. Further information is available on the HSE website. To discharge their duty to appoint competent professional advisers it is advisable to engage the services of members of recognised professional bodies such as RIBA, RICS or CIBSE etc. A Client will also be responsible to ensure that all professional advisers they employ have appropriate professional indemnity insurance in place.

Depending upon the work proposed it might also be necessary to seek further advice from other appropriate specialists such as an Environmental Consultant, say for roofing works, where there is the potential to disturb protected species such as bats during the course of the works. The penalties for disturbing protected species are substantial fines or potentially imprisonment.

The presence of asbestos is also a major issue for consideration during building, alteration and maintenance works. It is the legal duty of those responsible for commissioning any works of this nature to comply with the Control of Asbestos at Work Regulations 2012. An asbestos factsheet is included in this document. Further information is available on the HSE website.

Depending upon the nature and extent of any proposed works the appointment of appropriate professional advisers at an early stage is essential. The services they provide include: initial costing advice; preparing designs & specifications; advice on Planning and Building Regulation approvals including making formal submissions; advice on legal issues and contract law; managing and implementing a formal quotation or tendering process (which is likely to be required by funding providers); as well as advice on contractor selection and appointment. It is also advisable that the Client extends the appointment of professional advisers to the post contract stage to provide project management, contract administration and quality control of the construction phase. This is particularly relevant to ensure that Health and Safety Regulations are implemented; appropriate payments are made including advice on
VAT, any contract disputes are managed appropriately, and quality assurance checks of work carried out are made.

Durham County Council’s Building Design Services Department can provide these professional services if required and would be happy to quote a competitive fee proposal. However, if the Client wishes to employ their own professional advisers they will need to allow an element of cost within their cost plan for Durham County Council, as the owner of the building, to provide a technical appraisal of designs and specifications to ensure they are compliant, as well as the provision of the services of a Clerk of Works to ensure works are carried out to relevant standards. However, an added benefit of engaging DCC’s Building Design Services Department would be access to the Council’s Legal Services who would provide further advice should a legal issue or dispute arise during the course of the contract.

In most instances it will be necessary to include the appropriate professional fees for these services in any funding applications as funding providers expect projects to be implemented and administered by professional advisers acting on behalf of Clients to protect their own interests. Failure to do this could jeopardise a funding bid or lead to the withdrawal of funding approval.

It is worth bearing in mind when considering the engagement of professional advisers and the selection of appropriate contractors that the appointment of DCC’s in-house services will reduce the risks associated with the possible insolvency of external consultants and contractors.
SECTION 2
LANDLORD APPROVAL PROCESS

The leaseholder is required to seek Landlord Approval from Durham County Council in the first instance before any proposed works are to a Council owned building are considered. This can be done by contacting Dennis Brown on 03000 267021. This could include works of a minor nature where the need for landlord approval might not be obvious. The initial advice regarding the Landlord Approval process is a free service.

Landlord Approval will require the leaseholder to comply with the following areas:-

- **Design & Construction:** Ensure that you appoint a competent technical advisor, designer and contractor to carry out the works. If you wish to appoint DCC Design Services or an alternate professional advisor to design and manage your project please contact 03000 261123.

- **Insurance:** Ensure that the contractor you intend to employ has a current Employer’s Liability Policy that covers not less than £10,000,000 per occurrence, that the contractor has a current Public Liability Policy that covers not less than £5,000,000 for any one accident, and a current motor vehicle policy for vehicles accessing the site have cover for not less than £5,000,000 for any one accident or any one claim.

- **Planning:** The project may require Planning Permission before any work is allowed to proceed on site. We advise that the Durham County Area Planning Office is contacted to informally discuss the proposals.

- **Building Regulations:** Approval may be required for the proposed works. Ask your designer to ensure that the works are in accordance with current Building Regulations and they inform the necessary regulatory authority of the works. Or for further advice you can contact DCC’s Building Control office.
• **Asbestos:** Ensure that you and your contractor have checked your Asbestos Management Plan to make sure that none of your proposed works will impact upon any asbestos materials present. If the proposed works would affect the structure of the building or opened up/disturbed areas which have not been previously inspected during the asbestos management survey then a "Refurbishment and Demolition Survey" would be required.

• **Health & Safety:** Works carried out in or about your premises fall under the Health & Safety at Work Act. Your contractor must have an approved Health & Safety Policy which must be reviewed by a competent person who understands health and safety legislation as well as construction industry requirements.

• **Structural:** Ensure that the proposed work does not compromise the structural stability of the building and its fabric. A structural engineer's advice should be sought to ensure the design takes into account the structural stability of your building.

• **Equalities:** The Single Equality Act 2010 applies to all premises. You should examine how your proposed works may impact upon your accessibility strategy and accessibility plans?

• **CDM Regulations:** Ensure that you comply with the Client responsibilities in accordance with the Construction Design & Management (CDM) Regulations.

You will also need to ensure that you and your chosen consultant or contractor consider the impact and implications of the presence of native wildlife species affected by any proposed works which are protected under the Wildlife and Countryside Act 1981 (as amended), the Countryside and Rights of Way Act 2000 and the Conservation of Habitats and Species (amended) Regulations 2010.
Where works have been identified as being required to buildings which are included in the Community Buildings Transfer Process but are not receiving any investment from DCC, Landlord Approval will still be required. If Clients (management groups) do not wish to engage DCC’s Building Design Services to design, procure and manage proposed projects on their behalf but prefer to employ their own professional advisers, they will need to allow an element of cost for Durham County Council, as the owner of the building, to provide a technical appraisal of designs and specifications to ensure they are suitable, as well as the provision of the services of a Clerk of Works to ensure works are carried out in accordance with the design and specification.

This allowance should be as follows:-

- For building works up to a value of £20000 there is a fixed rate of £750.
- For building works over £20000 in value but less than £150000 an allowance of 3% should be included.
- For building works in excess of £150000 an allowance of 2.5% should be included.
- For all building works, regardless of value, a further allowance of 0.5% of the total value of the entire building works should be included where there is an asbestos implication associated with the proposed works.

Clients (management groups) should contact Katherine Beattie on 03000 261123 to arrange for the technical appraisal of designs and quality assurance process to be implemented. However, the final charge could be pro-rata the actual cost of the works should the scope of works change significantly from the original design. Therefore, final accounts of project costs might need to be submitted upon request. Invoices for the design technical appraisal and quality assurance processes will be sent directly to individual management groups.
The process will involve DCC’s Building Design Team undertaking an appraisal of the design, specification and schedules produced by the clients design team and implement the quality assurance process. This will incorporate the following:-

Pre-Contract (Technical Appraisal)

- Provide a peer review of the design and specification and comment on suitability
- Ensure that consideration has been given as to the life cycle costing of components to avoid low initial capital costs traded off against high maintenance costs
- Ensure the quality of the design and materials used are fitting for the situation and environment
- Advise the client on any potential costly maintenance which the designers have specified and any difficulties which they could encounter when undertaking routine maintenance
- Provide an overview of the internal security arrangements in place to ensure the safety of the buildings occupants

Post Contract (Quality Assurance)

- DCC will appoint a Clerk of Works to perform random site inspections to check on the quality of the works. Where issues are noted these will be raised with the client’s representative. The Clerk of Works should be copied in to all defects/snagging lists and made aware as and when defects are completed. A final inspection will be made by the Clerk of Works on completion of the work to ensure they have been completed to a satisfactory standard (Note the Clerk of Works role is different in terms of they are protecting the interests of Durham County Councils Assets Department and will not be acting on behalf of the Client)
SECTION 3

DESIGN

The CDM CONSTRUCTION (DESIGN & MANAGEMENT) REGULATIONS govern all aspects of health and safety associated with a project including the preparation of appropriate designs, the appropriate planning, allocation and co-ordination of resources, and the management of health & safety throughout a project from inception to completion and must be considered by a Client from the outset.

Other than for works of a minor repair or maintenance nature most works are likely to require the provision of a design and/or specification to demonstrate that the proposals are adequate and to allow quotes or tenders to be procured on the same basis. In most instances it is not acceptable for a contractors estimate or quote to be used without the provision of a design and/or specification in the first instance, particularly as most contractors do not carry design liability insurance.

All construction works are subject to the CDM Regulations to some extent. The Client duties under the CDM Regulations are quite onerous and cannot be delegated. One of the main Client duties under CDM is the need to appoint appropriate and competent construction professionals such as Architects, Project Managers, Quantity Surveyors and Structural Engineers etc. as well as appointing competent contractors to undertake work. This legal duty also extends to checking their competency prior to appointment. However, the type, scale and duration of any proposed works will determine if the project is classed as ‘notifiable’ and therefore subject to additional requirements such as appointing a CDM Co-ordinator from the outset, and a Principal Contractor which might involve a selection and tendering procedure.

The HSE guidance ‘Want Construction Work Done Safely?’ link below should be referred to by leaseholders which defines Client responsibilities under the CDM Regulations.

There are also many other associated Regulations, Acts of Parliament and Codes of Practice that need to be considered and implemented during the course of any construction works. These include the Health & Safety at Work Act, the Control of Asbestos at Work Regulations and the Building Regulations. Therefore it is essential that advice is sought from appropriate professional services when considering undertaking any building, alteration and maintenance works.

It is important to remember that undertaking work on commercial premises such as a community building is very different from undertaking work on a domestic property as much more complex and stringent rules and regulations apply.

Durham County Council’s CDM Co-ordinator is available for further advice if necessary and can be contacted by phoning Brian Freear on 03000 261126.
SECTION 4
PLANNING APPROVAL

Anyone proposing to alter, extend, build or change the use of premises must apply for planning permission from the local authority, unless the proposal is classed as 'permitted development'. Therefore it is essential that the local planning authority is consulted for pre-application advice during the initial inception stage of any proposed works.

The Development Management service of Durham County Council aims to provide a high quality pre-application advice service to those customers who are seeking professional advice as to the likely acceptability of development proposals. The service also deals with processing planning applications for building proposals, modifying buildings, changing the use of land or buildings, advertisement consent, listed building consent and other related matters.

The pre-application advice provided by the service aims to fully comply with all best practice advice principles by being timely, operating to one stop shop principles by being providing overarching advice covering the whole range of issues likely to be raised by a proposal, and by being customer focused.

Most importantly the advice provided at the pre-application stage carries strong weight as and when a planning application which follows such advice is received. Whilst pre-application advice can never be binding as and when an application is received, the level of detail provided in such advice is thorough and it is very rare that it is departed from once a formal application is received.

The charges levied are competitive compared to other Local Authorities within the North East region and some areas of advice (for example relating to house holder proposals) are free. In cases where charges apply, there are two levels of service that customers can chose from; Outline Advice – which merely provides a view as to the principle of a development proposal and Full Advice – which provides detailed advice in regard to the full range of issues that a proposals would raise.

1st Issue – 31.07.13
By providing these different options customers are able to select a cost effective product that is best suited to the stage of their particular development proposal.

Planning applications for businesses are considered in line with the development plan for the area which will include policies relating to commercial and industrial development. The overall purpose is to ensure that when a planning application is granted or refused, the decision is taken in the public interest so that new buildings and uses of land are of the right kind in the right place.

If you want informal advice before making a planning application, Durham County Council’s Planning Department should be contacted to give guidance on the relevant policies and other issues you will need to consider.

You should submit your proposals in writing to the planning offices. Alternatively, you can also contact an officer by phone, email or arranging to visit the council offices for informal advice. Further details of the pre application advice service are available on the Durham County Council website.

The contact details for the relevant area offices are:-

**Planning - North**
Planning Development (North)
PO Box 255
Chester-le-Street
DH3 9EA

email: dmnorth@durham.gov.uk
Tel: 0191 387 2171

**Planning - South/West**
Planning Development (South/West)
PO Box 114
Spennymoor
DL16 9BW

email: dmsouthwest@durham.gov.uk
Tel: 03000 261 060

**Planning - Central/East**
Planning Development (Central/East)
PO Box 616
Durham  DH1 9HY

email: dmcentraleast@durham.gov.uk
Tel: 03000 262 830
Depending on the nature and extent of the proposed works a full planning application could be needed. The timescales for any planning applications need to be carefully considered in relation to an overall project as the detail required and the length time to obtain a decision can be considerable, particularly if the work required is to a listed building or in a conservation area.
SECTION 5
BUILDING REGULATIONS APPROVAL

The Building Regulations are made under powers provided in the Building Act 1984, and apply in England and Wales. The current edition of the regulations is ‘The Building Regulations 2010’ (as amended) and the majority of building projects are required to comply with them. They exist to ensure the health and safety of people in and around all types of buildings (i.e. domestic, commercial and industrial). They also provide for energy conservation, and access to and use of buildings.

Anyone wanting to carry out building work which is subject to the Building Regulations is required by law to make sure it complies with the Regulations and, with some limited exceptions, to use one of the two types of Building Control Service available, i.e.

- The Building Control Service provided by the Local Authority
- The Building Control Service provided by approved inspectors

There will usually be a charge for this service although some works will be exempt.

The primary responsibility for achieving compliance with the Regulations rests with the person carrying out the building work. The appointed technical adviser, designer or contractor might take on this role. However, this should be clarified during the initial inception stage of a project or proposed works.

DCC’s Building Control Section offers free pre-application advice and an officer can be contacted on 03000 261870 for advice during the inception stage of any proposed works.
SECTION 6
ASBESTOS IMPLICATIONS

Prior to the agreement of the lease and the transfer of repairs responsibility Durham County Council will carry out a systematic and reasonable non-invasive survey of all premises to identify the risks from asbestos. They will record, as far reasonably practicable, the type and location of asbestos containing materials and installations. This type of survey is commonly known as an Asbestos Management Survey. The Asbestos Management Survey should form part of the Asbestos Management Plan which the legal Duty Holder is required by law to provide.

If the Asbestos Management Plan has yet to be produced, then DCC’s Asbestos Management Unit may be consulted for advice in all respects regarding potential asbestos issues on 03000 261217.

The legal definition of the Duty Holder in accordance with the Regulations is the person responsible for arranging repairs and maintenance works to a building. Please note that following transfer of repairs responsibility under the Community Buildings Transfer Process each community building management group will be required to nominate their own named duty holder. This can be either a competent individual or group of people.

The nominated person/group as indicated in the Asbestos Management Plan must ensure that Asbestos Containing Materials are properly managed as per the premises Asbestos Management Plan.

The Duty Holder, as defined in the Asbestos Regulations, has the following legal duties under the Regulations:-

a. Assess the risks
b. Draw up an asbestos management plans
c. Implement appropriate control measures
d. Regularly monitor and review the assessments and plans
e. Arrange for a localised pre-refurbishment survey’s to be undertaken during the planning stage of any proposed alteration works
It will be the responsibility of the Duty Holder of each community building to ensure that anyone visiting the site to undertake repair and maintenance work is made aware of the presence of asbestos within the building, and that they hold a current certificate of asbestos awareness training before they commence any work.

The management of asbestos within each building must be continually monitored, reviewed and audited. It is the responsibility of the nominated Duty Holder to arrange this. This can be carried out by anyone deemed as a ‘competent person’ in accordance with the law. Competency can be achieved either through relevant experience, qualifications or training.

If the premises do not have a “competent” person to carry out this role, they have the option of initiating an SLA (Service Level Agreement) with DCC’s Asbestos Management Unit to provide this service for an annual fee.

Where premises are shared with other employers, arrangements must be made for consultation and co-operation with them regarding the management of asbestos.

Following asset transfer Durham County Council’s Asbestos Management Unit will be available to provide further advice if necessary by contacting 03000 261217. Following transfer DCC’s Asbestos Management Unit must be advised of any asbestos removal works carried out and be sent copies of all air monitoring and clearance testing certificates. They should also be sent copies of all asbestos monitoring test certificates.

Further reference should be made to the HSE ‘Managing Asbestos in Buildings’ guidance which can be found by clicking on the link below:

SECTION 7
ECOLOGY IMPLICATIONS

When undertaking repair, maintenance or alteration of a building the possible implication of encountering protected species needs to be identified and considered. The presence of bats could be particularly relevant depending upon the nature of the work being considered.

There are 18 species of bat in the UK and all are protected by both National and European Legislation. Bats commonly use buildings for roosting and both bats and their roosts are strictly protected under the Wildlife and Countryside Act 1981 (as amended), the Countryside and Rights of Way Act 2000 and the Conservation of Habitats and Species (amended) Regulations 2010.

It is illegal to harm a bat or damage or disturb any bat roost (breeding site or resting place), whether occupied or not. Prosecution could result in imprisonment, fines of £5000 per animal affected and confiscation of vehicles and equipment used. It is important to note that the offence is arrestable and prosecution is personal and not corporate.

If local community groups wish to organise their own repair, maintenance or alteration work they will have to ensure that they are fully advised by a competent ecological consultancy to ensure they comply with the Law.

If specialist advice is not sought before works commence and bats are found during the works, the law will be broken potentially resulting in criminal prosecution. Notwithstanding any criminal investigation, all work in the vicinity of the roost must stop and specialist advice sought from a specialist ecological consultant and an EPS Licence required. If emergence surveys are needed to inform the EPS Licence application, the development can be significantly delayed, often with serious consequences for the work programme and grant claiming process.

Initial advice can be sought by contacting DCC’s Ecology Unit on 03000 267134. If an Environmental Consultant other than DCC’s Ecology Unit is engaged by the Client it will be necessary to forward a copy of all reports and licence applications to DCC’s Ecology Unit for vetting and recording.
SECTION 8
PROCUREMENT

Depending upon the nature, complexity and value of any proposed works it might be necessary to implement a formal procurement process, particularly where part or all of the funding for the works is being provided by funding bodies that have specific criteria which stipulates that grant approval is subject to a formal competitive process.

When procuring work individual management groups will usually be deemed to be the Employer or Client for a project. Unless the group have members who have particular knowledge and experience of implementing and managing a formal tender or quotation process, and they have the competency to project manage the construction phase, it is recommended that groups should consider engaging appropriate professional services to undertake this process on their behalf.

As well as managing and implementing the formal quotation or tendering process including preparing designs, specifications, schedules of work and contract documents, professional advisers will also provide advice on contractor selection and appointment including advice an insurance provision, legal issues and contract law and arranging for an appropriate formal contract to be agreed and signed. It is also advisable that the Client extends the appointment of professional services to include the post contract stage to provide project management, contract administration and quality control of the construction phase. This is particularly relevant to ensure that Health and Safety Regulations are implemented, appropriate payments are made, including advice on VAT, any contract disputes are managed appropriately, and quality assurance checks of work carried out are made.

For works of a minor nature management groups should still consider seeking initial advice from appropriate professional services at the outset before proceeding. They should also obtain at least three quotations from suitable reputable contractors. It is recommended that these contractors should be affiliated to an appropriate industry accredited body and can demonstrate a good previous reputation of working on similar projects.