

REPORT TO: Cabinet

1 April 2020

LEAD CABINET MEMBER: Councillor John Williams,
Lead Cabinet Member for Finance

LEAD OFFICER: Liz Watts, Chief Executive

Transfer of Community Assets Policy

Executive Summary

1. To determine a policy for the potential transfer of community assets to relevant third party organisations
2. This is a key decision as the report seeks to establish a policy for considering requests for, and the basis upon which, the potential future transfer of community assets to relevant organisations is made.

Recommendation

3. **That Cabinet is requested to consider and, if satisfied, approve the draft Community Assets Transfer Policy, attached at Appendix A, as the basis for considering requests for the transfer of community assets to relevant community based organisations.**

Reason for Recommendation

4. To determine an appropriate framework for the consideration of requests and the basis upon which the potential future transfer of community assets to relevant organisations is made.

Details

Policy Framework

5. There is a need to establish an open, transparent and robust Community Asset Transfer Policy to enable each application to be assessed fairly using sound economic, social and environmental wellbeing criteria.
6. The adoption of a Community Asset Transfer Policy would provide a consistent approach and transparent policy and framework and, as a consequence, demonstrate justification as part of its decision-making process.
7. The draft Community Asset Policy is attached at Appendix A.
8. It is proposed that the policy will be reviewed on a regular basis and updated when required. Reports on individual applications for asset transfer will be submitted for Cabinet approval when necessary.

Options

9. The option of not adopting the Community Asset Transfer Policy is not considered to be appropriate. Local authorities are accountable to their communities for the management of resources and local politicians and officers operate within local governance frameworks of checks and balances to ensure that decision-making is lawful, informed by objective advice, transparent and consultative. Good governance means that proper arrangements are in place to ensure that an authority's intended objectives are achieved and determining an appropriate framework for the consideration of the potential transfer of community assets to relevant organisations must be a key commitment to ensure that the Council has regard to its financial obligations and that it responds efficiently and effectively to service needs.

Implications

10. In the writing of this report, taking into account the financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered:

Policy

11. The report seeks to determine an appropriate policy for the Council to enable the proper consideration and potential transfer of community assets to community based organisations.

Legal

12. Section 123 Local Government Act 1972 provides the power to Local Authorities to dispose of land in any manner (freehold or leasehold) save that S123 imposes a requirement for Local Authorities to obtain the best consideration reasonably obtainable. This is interpreted as being the best price achievable in the open market.
13. Under the same section of the Local Government Act, the Council is also required to publicly advertise any proposed disposal of public open space and to consider any responses prior to determining whether to proceed with the transfer. This will, therefore, be an additional step that must be undertaken where requests are received to transfer any public open space. Any objections received will be reported to the relevant Lead Cabinet Member for consideration.
14. The leasehold disposals under the policy are in most cases likely to be granted at less than best consideration reasonably obtainable. In order to address this, the Council will carry out a cost benefit assessment in each case and/or will consider the Council's powers to dispose of land/property at less than best consideration under well-being powers under the General Disposal Consent 2003. This applies in cases where the Council considers the disposal will help to promote or improve the economic, social or environmental well-being of the area. In each case, a separate report will be prepared for Cabinet and such issues will be addressed as appropriate.
15. In the event that organisations fail to observe and perform the terms and obligations set out in the agreed leases, legal advice from relevant officers will be required detailing remedies available to the Council together with any agreed legal action thereafter (e.g. forfeiting leases and recovering possession of property).

Financial

16. Overall, it is not expected that the net revenue financial implications of the policy will be material to the Council. In certain circumstances, market rent may be reduced as social return is considered as an offset against this but, ordinarily, the Council will not transfer assets that have, or have the potential to derive, rental income. It is considered, however, that the number of cases where loss of rent may occur will not be significant and may be offset by other arrangements where no rental arrangement is currently in place at all.
17. When the Council is considering the transfer of the management of public open space, special regard will need to be taken of the potential cumulative effect of such transfers; this is because of the benefits of economy of scale that the Council achieves through managing a large portfolio of open space. Disaggregating the maintenance of open space into smaller areas could result in disruption to the efficiency of operations and the utilisation of plant and equipment.
18. In capital terms, opportunities to sell surplus buildings for capital receipts may reduce if assets are transferred in the form of long leases. Appropriate covenants will apply to protect the council taxpayer interests.

Staffing

19. As the policy goes live there may be several organisations applying for leasehold interests under the terms of the policy. As a consequence, this will impact on the resources and officers time (e.g. the preparation of draft leases, negotiating the final form and deducing the Council's freehold title (where applicable to do so).
20. There are further resource implications for the Council's property related staff and legal costs should these not be recovered from the applicant. Existing workloads might require that external solicitors would be required to undertake the legal work.

Risk

21. The proposed policy seeks to protect the Council from the risks associated with the transfer of assets and includes measures to ensure a proper legal framework for an agreed transfer and to mitigate future losses that may arise (e.g. covenants to protect the Council from future uplift in the value of assets).

Environmental

22. There are no environmental implications directly arising directly from the report.

Equality Analysis

23. The report is exclusively a support or administrative process and has no direct relevance to the Council's duty to promote equality of opportunity, promote good relations and eliminate unlawful discrimination.

Background Papers

Where the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require documents to be open to inspection by members of the public, they must be available for inspection:

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

The following documents are relevant to this report:

- Business Plan 2019 - 2014 – Report to Council: 21 February 2019

Appendices

A Transfer of Community Assets Policy

Report Authors:

Trevor Roff – Interim Director of Finance
e-mail: trevor.roff@scambs.gov.uk

David Ousby – Delivery & Innovations Manager
e-mail: david.ousby@scambs.gov.uk

Rory McKenna, Deputy Head of Practice
e-mail: rory.mckenna@scambs.gov.uk

Peter Maddock – Head of Finance
e-mail: peter.maddock@scambs.gov.uk

Appendix A



**South
Cambridgeshire
District Council**



Transfer of Community Assets Policy

April 2020

Introduction

1. This policy sets out the circumstances and conditions under which the Council will consider the transfer of interests (partial or full) in property, i.e. land and/or buildings or infrastructure, to third parties.
2. This policy establishes the nature of the organisations to which the Council will consider an asset transfer, the basis of the transfer and how requests will be processed. It establishes a transparent process for this to occur.
3. The general power of disposal (section 123 of the Local Government Act 1972) gives a local authority the power to dispose of land held by it in any manner it wishes provided that the local authority achieves the best consideration that can reasonably be obtained except where the disposal is for a short tenancy (the grant of a term not exceeding seven years or the assignment of a term which has not more than seven years to run) or the local authority has the consent of the Secretary of State. The Secretary of State has issued a general consent for disposals of land under section 123 for less than best consideration. This allows a local authority to dispose of land for less than best consideration if it considers that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of its area and the extent of the undervalue is no more than £2 million.
4. Related adopted Council policies and procedures include: Housing Revenue Account Sustainability Policy (Disposals and Acquisitions) 2013 and the Community Right to Bid Process 2014. This policy relates to transfers not covered by these policies and procedures.
5. This policy does not apply to community assets that have been acquired by compulsory purchase on behalf of a third party.

Eligible Organisations

6. The Council will, as far as its property assets are concerned, consider a transfer to community based organisations that provide a service to the whole community and where the use of the facility will continue to be available to all residents within the district. This will not preclude the casual hiring of facilities to members of the public, clubs etc.

Basis of Transfer of Council Assets

7. The Council has established criteria that sets out the basis of the interest in its assets that will be transferred to third parties. These criteria, which are set out below, also provide some basic principles regarding the future management of the asset:
 - (a) Any property interest transferred must be retained for the purpose for which it is transferred. It must be managed to at least the same standard as is currently provided by the Council for other similar property, and in a way that is compliant with all planning, licensing and other relevant regulations.
 - (b) The Council will need to be satisfied that there is no other suitably qualified party who also wishes to take over the management of the property that is subject to the request.

- (c) The Council will generally only transfer a leasehold interest. The lease will set out what has been agreed between the Council and the applicant regarding future provision of services from the property. The maximum length of lease will be 99 years, although leases may be for a shorter period. Only in exceptional circumstances will the Council consider leases for a longer period. Extensions to leases can be considered on a case-by-case basis.
- (d) All leases will contain a provision to enable the Council to terminate it should the property not be used for the purpose for which it is transferred, unless such changes have been formally agreed in writing.
- (e) The Council may seek to charge a rent for any property transferred.
- (f) The party receiving the property and/or open space interest will be expected to bear all costs of managing and maintaining the property and the transfer of a property interest does not imply any ongoing financial assistance from the Council. For clarity property shall include, in the case of the transfer of open space, any play areas, structures, trees, bedding, footpaths, lighting, drains, gullies, culverts, fencing, driveways, flag poles etc situated upon or forming part of the transferred open space. Adequate insurance must be maintained for the duration of the transfer and, in some cases, the Council may continue to insure any buildings transferred and, in such cases, will recover the cost of this from the party to whom the building is transferred.
- (g) The Council will not ordinarily transfer an interest in an asset where that asset either generates a profit/rent or where a profit/rental could be derived from it, or where the asset has development potential that could generate a future capital receipt. Income from casual hirings e.g. football pitches on an area of open space would not, for the purposes of this provision, constitute profit/rent.
- (h) In exceptional circumstances, the transfer of an interest in an asset with a small or nominal financial consideration could be considered where an assessment of the services to be provided shows the community benefit to be of greater value than the capital or profit/rental value. In practice, this will exclude assets which have a high market value for alternative uses.
- (i) If the organisation to which the asset is transferred is wound up or liquidated the lease will enable the Council to regain possession of the asset either for use by itself or by others.
- (j) The Council will propose a standard lease document to ensure a smooth and quick asset transfer. The organisation receiving the interest in the asset will be expected to bear their own costs. The lease document will include an option for the Council to co-invest in energy efficiency or generation schemes.
- (k) Whilst casual hirings and lettings will be permitted, any longer-term arrangements with third parties will require the Council's express approval to ensure that the property remains available for the purpose it was released.
- (l) The Council would encourage and welcome investment in assets made available to community groups and, in some cases, may require applicants to raise or bid for external funding to enable investment in the asset as a condition of the transfer. However, any proposed major works would require the Council's prior approval, the purpose again being to ensure that the property remains suitable for the use for which it was released (or any subsequently agreed variation).

- (m) Upon completion of the lease of the asset, the Council will undertake annual monitoring as part of its Corporate Asset Plan to ensure that the asset continues to be used for the benefit of the community as set out in the lease, that the asset continues to be properly maintained, that the lease terms are complied with and the lessees are maintaining acceptable levels of continued community use. Should failings be identified, resolution will be sought by the Council. Where satisfactory resolution of any failing is not possible the Council will consider forfeiting the lease and returning the asset to it.
- (n) At the end of any lease the Council will expect the property to be returned in the condition that it was made available.

Determining Applications for the Transfer of Council Assets

- 8. This section sets out how the Council will respond to, assess and determine requests it receives for the transfer of an interest in any of its assets.
- 9. All requests should initially be submitted in writing to the Democratic Services Manager who will co-ordinate the response to all requests. Organisations applying for an asset to be transferred at below market value will be expected to provide the reasons and rationale in a Business Case.
- 10. Each request will be considered initially by the Head of Service responsible for the property. Applications that fall outside the criteria set out in this policy will be advised within 28 days, with details of why this has occurred.
- 11. The Head of Service, in consultation with the Head of Finance and other officers, if relevant, will review the application having regard to the following matters together with any other that are considered relevant in respect of each application:
 - (i) that the applicant has the skills to manage the property on an on-going basis and the capacity and capability to meet the responsibilities in respect of legislative requirements;
 - (ii) that the applicant has the financial resources and skills to continue to manage the facility, including how the applicant will manage the asset as it ages, including a commentary of its eventual replacement plan if this occurs during the life of the lease;
 - (iii) that the applicant has a sound governance and operational management structure to fulfil its legal liabilities associated with the property, such as health and safety and equalities, and that the organisation will demonstrate appropriate accountability to the local community;
 - (iv) how, via the proposed business plan etc, the applicant will continue to provide benefit to the community and continued public access to the facility;
 - (v) the impact of the proposal on existing operational property and/or open space and the Council's property and open space portfolio and, in particular, any potential fragmentation of management of contiguous areas of property;
 - (vi) any financial implications that will affect the Council arising from the proposal;

- (vii) the identification of any legal restrictions that prevent the Council releasing the property as requested;
 - (viii) agreement with the applicant of the proposed use to which the property and/or open space will be put and specifically, in the case of open space, the standards to which the open space and any property on it will be maintained and managed. This will form a key term in any lease granted;
 - (ix) that the transfer of the asset will not adversely impact on the Council's ability to continue to deliver the service provided by the asset;
 - (x) that the application is consistent with the Council's approved Business Plan;
 - (xi) in dealing with the application the Council will have regard to the unrestricted value of the property (i.e. the best price reasonably obtainable for the property), and
 - (xii) ensuring that any proposed disposal at an undervalue will be in accordance with any statutory requirements prevailing at that time.
12. The Head of Service will also consult with Ward Councillors to obtain their view on the application. This will not occur in situations where an individual Member has a personal and prejudicial interest and, for example, is, in another capacity, a member of the organisation making the application.
 13. In receiving the views of the Ward Councillors, the Head of Service will then consult with, and obtain the views of, the relevant Lead Cabinet Member.
 14. Upon receipt of the views of the relevant Lead Cabinet Member and having completed all other investigations as set out in the document, and taking all the facts into consideration, the Head of Service will determine whether the requested transfer could be recommended for approval.
 15. If more than one party is interested in the same asset, the above criteria will be used to assess applications against each other.
 16. The Head of Service will prepare and submit a report to the Cabinet recommending that the request is recommended for approval or not. In either situation, reasons will be given for the recommendation made.
 17. The Head of Service will notify the applicant of the outcome of the application within 21 days of the decision of the Leader of the Council/Cabinet and will notify Head of HR and Corporate Services that the original request has now been dealt with.
 18. If the application includes the transfer of open space the proposed disposition will be advertised (as required by statute) and objections considered by the relevant Lead Cabinet Member (based on a report received for officers) prior to the final decision being made on the transfer.