

Bath & North East Somerset Council

DECISION MAKER:	Cllr David Bellotti, Cabinet Member for Community Resources Cllr Paul Crossley, Leader of the Council	
DECISION DATE:	On or after 7 th February 2015	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2741
TITLE:	97/101 Walcot St. Grant of long lease at less than market value under Community Asset Transfer policy	
WARD:	Walcot	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1: RICS – Local Authority Asset Management Best Practice – 07: Disposal of Land at less than Best Consideration		
Appendix 2: Heads of Terms for Community Asset Transfer 97/101 Walcot St		
Appendix 3: E2625: Single Member Decision. Community Asset Transfer – Granting of Long leases		
Appendix 4: Key Facts for Genesis Trust		
Appendix 5: 1-3 James St West. Principle Terms.		

1 THE ISSUE

- 1.1 The Medium Term Service & Resource Planning 2013/14 – 2015/16 and Budget and Council Tax 2013/14 reports set out an intended approach to Community Asset Transfers.
- 1.2 It is proposed to grant a lease at a nominal rent to a charity, Genesis Trust Bath, of premises under the provisions of the Community Asset Transfer policy. The grant will require cabinet approval to authorise the Chief Property Officer to deal with the disposal of the asset, because there are no current delegations or resolutions to allow such a transfer to take place at less than best consideration; best consideration being based on market values.

2 RECOMMENDATION

The Cabinet Member for Community Resources and Leader of the Council are asked to agree that:-

- 2.1 The Chief Property Officer be authorised to enter into an agreement for lease leading to grant of a lease on the heads of terms set out in Appendix 2.
- 2.2 The Council finance a scheme of refurbishment of the existing building to an agreed specification, for a maximum investment of £100,000.

- 2.3 On completion of the works, Genesis will take the lease and be committed to invest a minimum of £60k capital in fitting out the building to operate their charitable organisation.
- 2.4 The lease reserves a market rent, which is abated to nil subject to the tenant satisfying the landlord that it uses the property only for appropriate purposes in line with its constitution and charitable aims and with the Council having an option for the return of the asset at nil consideration should this use not continue.
- 2.5 The lease imposes restrictions ensuring that the premises can only be used for the charitable purposes set out in the tenant's constitution.
- 2.6 Prior to the lease being granted, Council officers are satisfied that the tenant has in place a constitution that is robust and sufficient.
- 2.7 The tenant has a break option every 5 years. If this option is exercised there will be no reimbursement of costs to Genesis for the value of their investment.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The Council are committing £100,000 to enable the refurbishment scheme of 97/101 Walcot St.
- 3.2 The proposal is to abate the rent to nil during the entire term of the lease. The estimated rental value of the property, assuming the building is in good repair, is £21,000 pa. Genesis will be committed to invest a minimum of £60,000 to carry out a scheme of improvements subject to approval from B&NES. The value of those works can be rentalised and equates to a deduction of £4,000 pa. Therefore the net revenue foregone is £17,000 pa.
- 3.3 Genesis occupied premises at 1-3 James St West until 30 June and they vacated at the Council's request to make that site available for sale. The rent payable under that tenancy was £12500 pa and this revenue stream will be replaced under the terms of the transaction set out in Appendix 5.
- 3.4 The capital input of £100,000 is included in 2014/15 Corporate Capital Estate Planned Maintenance cost plan and this will slip into 2015/16.
- 3.5 The terms of the disposal of 1-3 James St West are set out in Appendix 5. In the event that this transaction does not proceed then the ring fencing arrangements will be carried over into any subsequent transaction.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 Under s123 of the Local Government Act 1972, any disposal by the Council of an asset in excess of 7 years (including leasehold interests) must obtain "best consideration", unless the General Disposal Consent (England) 2003 can be applied or a specific consent is obtained.
- 4.2 The General Consent allows specified circumstances where the consent can be applied:
 - a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the

following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

- i) the promotion or improvement of economic well-being;
- ii) the promotion or improvement of social well-being;
- iii) the promotion or improvement of environmental well-being;

and

- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

4.3 The RICS is the governing body for Chartered Surveyors and they have set out guidance specifically to deal with this issue, which should be followed unless there are particular circumstances that mean that it is not appropriate. It essentially puts in place an audit trail so that the decision to dispose at less than market value is demonstrably robust. It is, therefore, considered that this is an appropriate model for sign off of the individual transactions, which should be undertaken in liaison with the Section 151 officer. The guidance is attached in full at Appendix 1 and in summary requires:

- a full valuation exercise is undertaken which understands the maximum theoretical Market Value for the asset to be transferred.
- calculation of the reduced values that apply because of any restrictions that the Council applies relating to things such as use, alienation, clawback, etc.
- the value added to the Council through the outcomes of the transfer has been assessed and found to be not less than the difference between market value and the actual price to be paid.

4.4 Whilst the principles of Community Asset Transfer were agreed at Council, there are no current delegations or resolutions to allow these transfers to take place at less than best consideration; best consideration being based on market values. This report, therefore, seeks to give such authorisation to the Chief Property Officer, who otherwise has the delegated powers to enter into property transactions on behalf of the Council

4.5 The disposal is not considered to constitute State Aid.

5 THE REPORT

5.1 The property is currently occupied by two individuals trading as Abbey Furniture by virtue of a tenancy at will. Notice has been served on the tenants opposing the grant of a new lease under the statutory provisions of the Landlord and Tenant Act 1954 on the grounds of a) lack of repair and b) redevelopment. The period for challenge has expired and the tenants have been invited to enter into a new tenancy at will and remain in occupation until end January 2015 when the property would be available with vacant possession.

5.2 Genesis Trust Bath is an established charity which runs a range of services to help the homeless and vulnerable in the city and helps disadvantaged adults. These services include a furniture renovation project, a food bank, the Soup

Run and the street pastors scheme. The summary sheet setting out the key facts for Genesis Trust is included at Appendix 4

- 5.3 Until 30 June Genesis occupied premises at 1-3 James St West and their tenancy was terminated by B&NES consequent on the proposed sale of that site for redevelopment. They were prepared to vacate without attempting to exercise their statutory rights for a new tenancy, on the informal understanding that the Council would find alternative premises to rehouse them.
- 5.4 They were introduced to the Walcot St site and expressed interest in occupying the building. Since that time negotiations have been conducted to agree Heads of Terms as set out in Appendix 2.
- 5.5 The building is in need of substantial repair and refurbishment and a scheme of works has been prepared which the Council intend to fund up to a maximum of £100,000 to put the shell into a suitable state for occupation.
- 5.6 Genesis intends to carry out a scheme of further works to fit out the premises for their use and have appointed architects to prepare the scheme. This will be provided to the Council for our approval, including a specification and associated costs of those works, and it is agreed that they will invest a minimum of £60,000. They are currently raising funds for this purpose.
- 5.7 The Council has been in discussion with Genesis to be satisfied that they are sufficiently robust in their constitution to take on the liability for a long lease of the nature proposed. Consideration has also been given to the corporate objectives that are expected to be met by the transfer of the relevant property assets. The basic premise is that the organisation will be able to grow its capacity to deliver better services to the communities the Council serves, thus being in line with one or more of the headings set out at Paragraph 4.2 above.
- 5.8 The Cabinet needs to be satisfied that the value added by the transfer, in terms of community outcomes, equals the value of the asset forgone, to the extent of £17,000 per annum. It is then desirable that ongoing delivery of these outcomes is protected throughout the term of the lease. It is proposed that this is best achieved by an annual progress report on the outcomes being delivered by the group and the lease to be set up on the basis that if the group fail to deliver the outcomes then a market rent is payable.

6 RATIONALE

- 6.1 At its meeting of 19th February 2013 Council resolved to note the approach to Community Assets as set out and support the progression of transfers to the organisations identified in the Annexe. It was agreed, as set out at Appendix 2 - Annexe 6 to the February 2013 Council report, that a number of potential organisations be identified to be taken forward and Genesis Trust was one of those listed.
- 6.2 The application of this policy is in line with guidance to Local Authorities on asset transfers. The idea is to help secure community benefits in line with Council priorities and objectives by transferring property at a peppercorn rental, in exchange for arrangements designed to secure community benefits in line with Council objectives.

6.3 The majority of the quick wins were considered in a joint Single Member Decision - E2625 Community Asset Transfer - Granting Long Leases, (Appendix 3) which confirmed the disposal of the assets on long lease at a peppercorn, but the Genesis Trust proposal was excluded because discussions were not sufficiently advanced.

6.4 As there are no current delegations in place to officers it is necessary to give specific authority to enter into this transaction. The proposals give a structure which can demonstrate the audit trail that led to the grant of a leasehold disposal at less than market value.

6.5 The grant of a lease to Genesis will enable the realisation of the capital receipt from the sale of James St West.

7 OTHER OPTIONS CONSIDERED

7.1 None. This proposal is in accordance with the approved policy of community asset transfers in relation to one of the subject organisations identified as a "Quick Win"

7.2 The principle of a disposal at less than best consideration needs to be documented to permit the Chief Property Officer to complete the transaction. To do otherwise would mean the CPO is acting outside of his delegated authority.

8 CONSULTATION

8.1 Cabinet members; Section 151 Finance Officer; Chief Executive; Monitoring Officer

The report will be circulated to the above consultees and any comments or amendments incorporated in to the final document.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	Richard Long – Chief Property Officer – 01225 477075
Background papers	Report and Minutes of Council 19 th February 2013
Please contact the report author if you need to access this report in an alternative format	