

## Bath & North East Somerset Council

DECISION MAKER:	Cabinet Member for Community Resources with Leader of The Council		
DECISION DATE:	On or after 1 <sup>st</sup> March 2014	EXECUTIVE FORWARD PLAN REFERENCE:	
		E	2625
TITLE:	Community Asset Transfer – Granting of Long Leases		
WARD:	All		
<b>AN OPEN PUBLIC ITEM</b>			
<b>List of attachments to this report:</b> Appendix 1 - RICS - Local Authority Asset Management Best Practice - 07: Disposal Of Land At Less Than Best Consideration Appendix 2 – Summary Sheets for Assessment of individual Asset Transfers Appendix 3 - Empowering communities: making the most of local assets. A LGA publication - available via link and on Minute book <a href="http://locality.org.uk/wp-content/uploads/Companion-Guide-for-Local-Authorities-Empowering-Communities.pdf">http://locality.org.uk/wp-content/uploads/Companion-Guide-for-Local-Authorities-Empowering-Communities.pdf</a>			

### 1 THE ISSUE

1.1 The Medium Term Service & Resource Planning 2013/14 – 2015/16 & Budget and Council Tax 2013/14 reports set out an intended approach to Community Asset Transfers.

It was agreed - as set out as Appendix 2 - Annexe 6 to the February 2013 Council report – that a number of potential organisations be identified to be taken forward in the first year. The idea is to help secure community benefits in line with Council priorities and objectives by transferring property at a peppercorn rental, with certain controls.

The application of this policy is in line with guidance to local authorities on asset transfers and requires a Cabinet authorisation to deal with the disposal of these assets at less than market value. The use of the assets for the purposes envisaged has already been agreed in previous years. The change proposed is one of tenure.

The theoretical market value of the properties affected has already been restricted by previous Council policy decisions, and these proposed transfers effectively

decide that these restrictions should continue, with less rental in exchange for arrangements designed to secure community benefits in line with Council objectives.

## **2 RECOMMENDATION**

The Leader and Cabinet member for Community Resources is asked to agree that:

2.1 The Chief Property Officer is authorised to enter in to long-leases of the properties set out within the body of the report at Schedule 1.

2.2 The Leases to be granted subject to:

- The organisation accepting full repairing and insuring terms
- Use being restricted to community purposes and uses ancillary thereto, with the Council having an option for the return of the asset at nil consideration should this use not continue

2.3 Prior to the leases being entered in to, Council officers to be satisfied that the individual occupiers have in place a constitution that is robust and sufficient.

2.4 The lease to reserve a market rent. However, the lease will abate the rent to zero on the condition that, every year there is an annual progress report setting out the community benefits achieved, and every five years, the group provides a copy of its constitution, articles of association and other supporting documentation to satisfy the Council that it continues to operate the property for appropriate purposes.

## **3 FINANCIAL IMPLICATIONS**

3.1 Local authorities are given powers, under the *Section 123 of the Local Government Act 1972*, to dispose of land in any manner they wish. The only constraint is that a disposal must be for the best consideration reasonably obtainable unless the Secretary of State consents to the disposal.

3.2 The *Local Government Act 1972: General Disposal Consent (England) 2003* gives consent to a disposal of land at less than market value if the land 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;

so long as the difference between the unrestricted value of the land to be disposed of and the actual consideration received does not exceed £2 million.



- 3.2 In considering whether to dispose of land at less than market value the RICS has issued guidance of best practice which is attached at Appendix 1. At Appendix A to that report is a Checklist for taking less than best consideration decisions. It is suggested that this checklist should be the basis used for the signing-off of any disposals on this basis
- 3.3 Because the Council would seek to protect the assets for use in line with their existing community purposes it is legitimate to impose voluntary restrictions on the properties as a condition of transfer. With such restrictions, the total annual rental value of assets to be transferred is estimated by officers to be between £102,450 and £125,950 per annum, in respect of the properties that are the subject of this report (see body of report for breakdown).
- 3.4 The cabinet therefore need to be satisfied:
- They wish to continue to support the use of the properties for similar uses to now so that they can continue to be part of a pattern of service and community provision rather than a new speculative source of increased capital value. That the community outcomes being offered by the individual groups is likely to be equal to the rent or premium forgone
- 3.5 By adopting the recommendations as set out 2 above the Council will have an audit trail in place to support the individual asset transfers and a method to secure community outcomes
- 3.6 Inquiries have been made of HMRC regarding the liability for Stamp Duty Land Tax in respect of the proposed transactions. Because, by operation of the lease, the actual level of rent payable will be nil, no SDLT will be payable. SDLT would only become due if the rent abatement ceased and the organisation became liable to pay the Market Rent. At this time HMRC would need to be notified and SDLT would be payable based on the Market rent for the remainder of the term. The maximum level of SDLT that the tenant would be liable for in these circumstances is set out at schedule 2 below, with figures derived from HMRC's online calculator.

#### **4 CORPORATE OBJECTIVES**

- *Promoting independence and positive lives for everyone* - The ability to build the capacities of the groups, because they will be benefitting from Community Asset Transfer. The organisations involved will be able to improve their activities in this area, and will have greater security, without the need to find additional scarce resources to fund property costs.
- *Creating neighbourhoods where people are proud to live* - land and buildings subject to Community Asset Transfer will have the potential to provide a sustainable focus to the local communities that they serve. This proposal helps local people make positive changes within their own communities.
- - In line with the Localism Agenda the Council is keen to help local groups get involved and support them to make improvements within their local neighbourhoods and communities.

- In examining the individual cases for Community Asset Transfer a full understanding of the benefits that the groups or organisations can bring to the delivery of the Council's Corporate Objectives will be tested and understood.

## 5 THE REPORT

- 5.1 At its meeting of 19<sup>th</sup> 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 Annex.
- 5.2 Detailed work has now been undertaken to assess the issues relating to each of the organisations set out in that report. In some cases this has led to a conclusion that either it will not yet be possible to progress the transfers at this time or that a staged approach to transfers is appropriate. Beacon Hall has already been transferred to Peasedown Parish Council.
- 5.3 The following properties are considered appropriate to take forward on the basis of the preferred method of transfer, which is a long lease (99 years) at a peppercorn rent, with clauses that are appropriate to protect the use of the land or building for the relevant community purpose.

### Schedule 1.

<b>Property</b>	<b>Organisation</b>
Land North of Kelston Road	Bath Scouting Association
WHISTY Hall, Radstock	WHISTY Community Association
Former Midsomer Norton Railway Station, Silver Street, Midsomer Norton	Somerset and Dorset Trackbed Trust
Percy Community Centre, Bath	Percy Community Association
Midsomer Norton Town Hall and Other Land	Midsomer Norton Town Council/Town Trust

- 5.4 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 for the properties, who otherwise has the delegated powers to enter in to property transactions on behalf of the Council

5.5 Community Asset Transfers are seen as a positive addition to provision of local services and the Local Government Association has published guidance for Councils which is attached at Appendix 3

5.6 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 Appendix1

5.7 The Council has been in discussion with the organisation currently in occupation of the subject properties and is working with the groups 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 organisations will be able to grow their capacities 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 3.2 above.

5.8 A summary of the facts for each proposed transfer is set out Appendix 2.

5.9 The RICS guidance requires that a full valuation exercise is undertaken which understands

- the maximum theoretical Market Value for the asset to be transferred Given the planning restrictions on the loss of community assets it is assumed for the purposes of this exercise that the market value is for existing community use as there is reasonable expectation that a change of use away from this would not be allowable in planning terms
- the reduced values that apply because of any restrictions that the Council applies relating to things such as use, alienation, clawback, etc.
- that the difference between Market Value and the actual price to be paid has been assessed and found to be equal to (or in excess of) the value added to the Council through the outcomes of the transfer.

Therefore:

Actual Disposal Costs + Value Added by Transfer + Value of Voluntary Restrictions

**Must Equal Market Value**

5.10 For the purposes of this report, officers have undertaken initial valuations based on the best available evidence of the assets that are the subject of this report, to give a broad indication of the possible calculations involved and this is set out in table below. The final figures will be agreed by negotiation with the relevant groups

5.11 By its resolution of February Council has essentially confirmed that it wishes to commit these assets to community purposes. As a next stage, the Cabinet needs to be satisfied that the value added by the individual transfers in terms of community outcomes, equals the cost of the asset forgone, to an estimated extent of £102,450 to £125,950 per annum for the subject properties. 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 done 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.

## Schedule 2

<b>Asset</b>	<b>Theoretical Market Value</b>	<b>Based On</b>	<b>Maximum Level of SDLT Payable</b>
Land North of Kelston Road	£1,450 per annum	Existing Use Values	£nil
WHISTY Hall, Radstock	£20,500 per annum	Existing Use Values	£4,162
Former Midsomer Norton Railway Station, Silver Street, Midsomer Norton	£12,500 per annum	Existing Use Values	£1,952
Percy Community Centre, Bath	£43,000 per annum	Existing Use Values	£10,378
Midsomer Norton Town Hall and Other Land	£25,000-48,500 per annum	Existing Use Values. Will vary depending on which buildings are included within the transfers.	£5,405-11,897

## 6 RISK MANAGEMENT

6.1 The report author and Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

## **7 EQUALITIES**

- 7.1 An Equalities Impact Assessment has not been completed at this stage because any significant issues will be examined as part of the assessments undertaken in respect of the individual properties on a case-by-case basis.

## **8 RATIONALE**

- 8.1 As there are no current delegations in place to officers it is necessary to give specific authority to enter in to these transactions at less than market value. The proposals give a structure, the use of which can demonstrate the audit trail that lead to the grant of a leasehold disposal at less than market value.

## **9 OTHER OPTIONS CONSIDERED**

- 9.1 An alternative would be to bring each of these disposals for cabinet approval. So long as the individual decisions are taken using the guidance offered by the RICS this level of sign off is seen as being unnecessary.
- 9.2 Entering in to these agreements without a policy decision that a principle of sale at less than market value is agreed would mean that the Chief Property Officer was acting outside of his delegated authorities and would therefore be acting unlawfully.

## **10 CONSULTATION**

- 10.1 *Cabinet members; Other B&NES Services; Section 151 Finance Officer; Chief Executive; Monitoring Officer*
- 10.2 The report will be circulated to the above consultees and any comments or amendments incorporated in to the final document

## **11 ISSUES TO CONSIDER IN REACHING THE DECISION**

- 11.1 *Property; Other Legal Considerations*

## **12 ADVICE SOUGHT**

- 12.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.



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<b>Background papers</b>	Report and Minutes of Council 19th February 2013
<b>Please contact the report author if you need to access this report in an alternative format</b>	