

Single Member Cabinet Decision

Executive  
Forward Plan  
Reference

**E2625**

**Community Asset Transfer – Granting of Long Leases**

<b>Decision maker/s</b>	Cllr Bellotti, Cabinet Member for Community Resources Cllr Crossley, Leader of the council
<b>The Issue</b>	<p>The Medium Term Service &amp; Resource Planning 2013/14 – 2015/16 &amp; Budget and Council Tax 2013/14 reports set out an intended approach to Community Asset Transfers.</p> <p>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.</p>
<b>Decision Date</b>	03 March 2014
<b>The decision</b>	<p>The Cabinet Members agree that</p> <ul style="list-style-type: none"><li>• 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<ul style="list-style-type: none"><li>○ The Leases to be granted subject to:</li><li>○ The organisation accepting full repairing and insuring terms</li></ul></li><li>• 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</li><li>• 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.</li><li>• 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.</li></ul>

<p><b>Rationale for decision</b></p>	<p>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.</p>
<p><b>Financial and budget implications</b></p>	<p>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.</p> <p>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;</p> <ul style="list-style-type: none"> <li>i) the promotion or improvement of economic well-being;</li> <li>ii) the promotion or improvement of social well-being;</li> <li>iii) the promotion or improvement of environmental well-being;</li> </ul> <p>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.</p> <p>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 of the report. 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</p> <p>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).</p> <p>The cabinet therefore need to be satisfied:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• That the community outcomes being offered by the individual groups is likely to be equal to the rent or premium forgone</li> </ul> <p>By adopting the recommendations as set out above the Council will have an audit trail in place to support the individual asset transfers and a method to secure community outcomes</p> <p>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</p>

	term. The maximum level of SDLT that the tenant would be liable for in these circumstances is set out at schedule 2 of the report, with figures derived from HMRC's online calculator.
<b>Issues considered</b>	Property; Other Legal Considerations
<b>Consultation undertaken</b>	Cabinet members; Other B&NES Services; Section 151 Finance Officer; Chief Executive; Monitoring Officer
<b>How consultation was carried out</b>	The report was circulated to the above consultees and any comments or amendments incorporated in to the final document
<b>Other options considered</b>	<p>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.</p> <p>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.</p>

<b>Signatures of Decision Makers</b>	
<b>Date of Signature</b>	

**Subject to Call-in until 5 Working days have elapsed following publication of the decision**