

## APPENDIX 1.

### RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL

#### SCRUTINY IMPACT REPORT

#### COMMUNITY ASSET TRANSFER TASK AND FINISH GROUP

March 2015

#### **Introduction**

The Resources Policy Development and Scrutiny Panel have requested an update on the review undertaken on Community Asset Transfer by the task and finish group.

The review made five recommendations. This report will identify the progress made in relation to these; or where it has proved necessary the alternative steps taken to facilitate the Community Asset Transfer process.

The report will also provide an explanation on the general approach to granting the Community Asset Transfers, together with an update on the specific transfers which have either been or are on their way to being implemented within Bath & North East Somerset.

#### **A summary of the general approach to granting Community Asset Transfers**

The first series of Community Asset Transfers were set out within the Medium Term Service & Resource Planning 2013/14 – 2015/16 and Budget and Council Tax 2013/14 report. This report identified the intended approach to be adopted for granting the asset transfers. As further transfers have been pursued these have been the subject of their own Member approval.

Under these transfers, which are generally for a term of 99 years although this may vary, the leases reserve a market rent which is abated to nil. This abatement is dependent upon 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 community use not continue.

The leases impose restrictions ensuring that the premises can only be used for the charitable purposes set out in the tenant's constitution.

Prior to the lease being granted, Council officers ensure that the tenant is a properly constituted body that is suitable and sufficient to take on the responsibility for managing a council property asset.

Each lease contains a provision that the tenant has a 6 month rolling break option throughout the term.

**Recommendation 1:** *Develop a Community Building Value Index which brings together the following three elements:*

- *Financial return on an asset*
- *Community benefit*
- *Measure of organisational sustainability*

#### **Financial return on asset**

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Whilst the development of a meaningful index has proved difficult every transfer involves consideration of the three components in recommendation 1 prior to the granting of a lease.

Under the *Local Government Act 1972 s123*, 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 can be applied or a specific consent is obtained.

The *Local Government Act 1972 : General Disposal Consent (England) 2003* 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).

The Royal Institution of Chartered Surveyors has set out guidance specifically to deal with this issue and puts in place an audit trail so that any decision to dispose at less than market value is demonstrably robust. The guidance is attached in full at Appendix 2 and in summary requires:

- a valuation exercise 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 to be not less than the difference between market value and the actual price to be paid.

### **Community Benefit**

An exercise is undertaken in consultation with colleagues in Strategy & Performance prior to entering into a lease to ensure the value added to the Council through the outcomes of the transfer is not less than the difference between market value and the actual price to be paid. Community benefit is challenging to value in pure financial terms alone and any assessment must therefore also heavily rely upon a significant element of subjectivity in respect of the benefits to be gained.

However, consideration is given to the community benefits that are expected to be achieved by the transfer of the relevant property assets. The basic assumption is that the transfer will enable an organisation to grow its capacity to deliver better services within the communities the Council serves.

Furthermore, in order to ensure that ongoing delivery of these outcomes is protected reviews are undertaken throughout the term of the lease to check that the constitutional aims and objectives of the organisations remain unchanged and that the outcomes being delivered by the group are similar to those at the beginning of the lease. In the event that any group is failing to deliver the outcomes originally envisaged then provision exists within the lease for a market rent to become payable.

### **Measure of organisational sustainability**

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Prior to any transfer the Council needs to be satisfied that any organisation is sufficiently robust in their constitution to take on the liability for a long lease of the nature proposed. This does not simply relate to financial stability but also involves ensuring that any group is fully equipped with the skills, abilities and resources to take on the responsibility of managing a Council property asset. Given the length of many of these transfers the membership and leadership of these organisations will change. Where it is possible to do so, consideration will also be given to any succession planning arrangements the group has in place.

**Recommendation 2:** *Encourage the use of flexible leases for community asset transfer projects rather than just long term leases for 25 years and over, these could be small leases of 3-6 months initially and once a project becomes established longer term leases of 6-10 years could be made available.*

### **Flexible leases.**

Whilst the general approach involves the granting of a 99 year term, it will be noted from the schedule below that a variety of different lease lengths have been adopted each suited to the particular circumstances of the transfer. The 99 year leases have mainly been granted at the tenant's request. It has been viewed that a term of such length provides an organisation with the certainty of occupation to embed their community services. However, provision is made in leases of this length that the tenant has a 6 month rolling break option throughout the term.

In certain circumstances, where it is beneficial for an organisation to take occupation before they are in a position to enter into a lease for a substantial term, consideration is given to the granting of a short term flexible tenancy. This may be to assist a group in establishing itself or commencing fund raising or addressing a particular community need that cannot wait until the negotiations for a long lease have been concluded. This arrangement is currently being considered in respect of Fairfield House.

**Recommendation 3:** *We suggest developing a committee/ working group which brings together key representatives e.g. Property Services, Policy and Partnerships, Health and Safety, Business Continuity, Parish/Town/Council Members to assess the feasibility of community asset proposals, similar to the way the existing Safety Advisory Group operates for events.*

### **Development of a working group**

Whilst a formal committee has not to date been created, there is now an established group of officers across the Council who work closely together on each of the transfers. This consultative group include representatives from Property & Project Delivery, Strategy & Performance, Finance, Legal Services.

The Group has also benefited from the close involvement of Cabinet Members including Cllr Crossley, Cllr Bellotti and Cllr Dixon who have all given their full support to facilitating these transfers.

**Recommendation 4:** *The existing Resources Policy Development and Scrutiny Panel could have a standing item on their agenda to consider:*

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- *Requests for asset transfer policy and individual cases (this would not be a decision making forum but provide the opportunity to offer advice/support to interested groups)*
- *Provide a reference point for all those buildings happily ticking over who either suddenly face a crisis or who want to initiate a development project and need advice.*

### **Community Asset Transfers as a Standing item**

It is understood that this recommendation was deferred.

**Recommendation 5:** *Facilitate community asset projects with the creation of a self-help group. This would allow 'successful' community asset projects and newly established projects to share information and develop best practice.*

#### **Creation of a self-help group**

Colleagues in Strategy & Performance have reported that The "Connecting Capacity" project (funded by the Council) has provided tailored, bespoke support to organisations considering and developing community asset transfer proposal. This has included governance, finance and related issues. For example, support has been given to Fairfield House and to WHISTY in developing their plans, and feedback from the organisations involved has been positive. Although no specific "self-help" group has been established this has led to the sharing of good practice, learning and experience across the various community asset transfer projects - eg in establishing the most appropriate forms of governance relevant to each proposal.

#### **Update on current Community Asset Transfers**

Please refer to the table below in Appendix 2, which provides an update on the status of the Community Asset Transfers currently being progressed.

Richard Long – Head of Property, Property & Project Delivery

Andrew Pate – Strategic Director, Resources.

**1 March 2015**

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<b>Property</b>	<b>Proposal</b>	<b>Current Stage</b>
<b>Beacon Hall/Beacon Field, Peasedown St John</b>	50 year lease of Beacon Hall and field to Peasedown St John Parish Council	Lease Completed
<b>Chapel Arts Centre, St James Memorial Hall, Bath</b>	Sale of freehold, subject to restricted covenants	Sale completed 6 August
<b>97-101 Walcot St, Bath</b>	99 year lease to Genesis with provision for total refurbishment of the premises.	All terms agreed for the new lease
<b>MSN Town Hall and various plots plus Orchard Vale Com. Centre</b>	99 year lease to MSN Town Council	Draft lease issued to the Town Council for agreement
<b>Whisty Community Centre, Stoneable Road, Radstock</b>	99 year lease to Whisty Community Association	Draft lease issued to the community association for agreement.
<b>Alexandra Park Bowls Club, Bath</b>	99 year lease to Alexandra Park Bowls Club	Draft lease issued to the Bowls Club for agreement.
<b>Midsomer Norton Railway Station, Silver Street, Midsomer Norton</b>	99 year lease to Somerset and Dorset Railway Heritage Trust.	Draft lease issued to the Trust
<b>Land at Kelston Rd, Bath</b>	99 year lease of the existing Scout camp and adjoining fields.	Draft lease issued to the Scouts for agreement.
<b>Percy Community Centre, New King Street, Bath</b>	99 year lease to Percy Community Association	Draft lease to be issued to the community association for agreement.
<b>Batheaston Gardens car park and WC block</b>	99 year lease to Parish Council	Draft lease to be issued to the Parish Council for agreement
<b>Former Organ Works, Walcot Street</b>	99 year lease to Bath Canoe Club	Draft lease to be issued to the Club for agreement. .
<b>4 Abbey Street, Bath</b>	16 year lease to 44AD, a newly established Community Interest Company.	44AD already in occupation under a short term licence. Draft lease to be issued to the Community Interest Company for agreement.
<b>Timber Drying Shed, Spring Gardens Rd</b>	16 year lease to River Regeneration Trust	Draft lease to be issued once of scheme of works finalised.
<b>Fairfield House, Newbridge, Bath</b>	Transfer to a newly established Community Interest Organisation, eventually on a 99/125 year lease of the building, but initially on a short-term 1-2 year lease.	Terms of transfer under negotiation
<b>YMCA , Broad St, Bath</b>	Transfer under consideration	External valuation has been commissioned.
<b>Saltford Brassmill, The Shallows, Saltford</b>	Transfer under consideration.	Consideration being given to the appropriate organisation to take the transfer
<b>Cleveland Pools, Hampton Row, Bath</b>	Long lease to Cleveland Pools Trust under consideration	Discussion ongoing with Trust