Nottinghamshire County Council

Report to Policy Committee

12 November 2014

Agenda Item:11

REPORT OF CHAIRMAN OF FINANCE AND PROPERTY COMMITTEE

COMMUNITY ASSET TRANSFER POLICY

Purpose of the Report

1. To seek approval to the Community Asset Transfer Policy.

Information and Advice

2. **Background**

National Policy Context

2.1 Since 2007 a number of reviews and legislative provisions have been issued by Central Government with the stated aim of creating strong prosperous communities and delivering better public services. Governments view is that this can be achieved through a re-balancing of the relationship between Central Government, Local Government and local people by giving residents a greater say over local services.

2.2 Initially the Local Government White Paper "Strong and Prosperous Communities" was published in 2006, one element of which touched upon the transfer of property assets to the community. Asset Transfer is defined by the Department of Communities and Local Government as *"passing ownership or management of a building or piece of land from a public sector body to a third sector organisation".*

2.3 A subsequent review instigated by the government (called the Quirk review) considered issues around asset transfer and concluded that the transfer of assets to the community can work, by being clear as to the risks associated with the process and learning to manage them effectively, it can open up new sources of finance and extend the use of existing facilities to a wider community. The clear lead from Government was that local management and ownership of assets makes for strong communities with the objective being greater community empowerment.

2.4 This was followed by the 2011 Localism Act which contained provisions that relate to assets of community value. These provisions came into force on 21 September 2012. The legislation provides communities with a right to bid for land or property which has valuable community use. The aim of these provisions is to give an opportunity for local community groups and social enterprises to be informed when an important local amenity/building comes up for sale and to provide time for local people to organise themselves so that they can bid to purchase the property, thereby preventing the loss of a facility/service that is considered important to that community.

2.5 The 2011 Localism Act provides a framework for administering the scheme and the Regulations provide further details, a summary of these are set out in the attached Draft Policy at Appendix 1.

3 Purpose of this Policy

3.1 The use and occupation of Council owned premises by community groups is not new. The Council currently have a variety of organisations ranging from voluntary support groups to sporting and youth groups based in Council owned buildings. The purpose of this policy is to build upon current experience and best practice and provide a transparent framework for responding to any requests for asset transfer including a set of criteria against which applications can be considered.

3.2 The objective is to enable applications from potentially a wide variety of organisations to be assessed and decide whether asset transfer supports Council and wider community objectives.

4 Principles of the Asset Transfer Policy

4.1 The policy is underpinned by the following principles:-

4.1.1 Any proposed transfer must support the aims and priorities of the Council

4.1.2 The Council will take a strategic approach to Corporate Asset Management Planning by reviewing its portfolio and undertaking option appraisals which will include examining the transfer potential of its assets.

4.1.3 The Council will adopt a transparent corporate process for asset transfer which will include a clear point of first contact and clear stages and timescales for each party.

4.1.4 The Council will adopt an agreed method of assessing the benefits of the transfer (linked to corporate priorities).

4.1.5 The presumption is that all disposals will be at market value. The priority will be to obtain the best outcome to support the delivery of Council objectives.

4.1.6 The Council however does have the opportunity under the General Disposal Consents 2003 to sell or lease assets at less than best consideration in cases where it can be demonstrated that wellbeing benefits arise. This will require balancing the best price reasonably obtainable to support the capital programme against the benefits being offered through alternative use. Where the sale price is £2 million or more below best consideration it will require Secretary of States consent. Councils are still required to meet their general fiduciary duty.

4.1.7 If any disposal at less than best consideration is pursued, it will need to be accompanied by a legally binding service level agreement (SLA) or other appropriate agreements identifying the benefits and how these will be monitored and measured.

5 Proposed Policy Framework

5.1. The *attached* policy framework sets out the criteria the Council will apply to assess requests for the transfer of Council owned assets.

5.2. Due to the diverse nature of the Councils property holdings which includes land, buildings, structures, and monuments, it is unlikely that one policy will fit all circumstances. However a number of common themes will apply. The nature of the applicant's their track record and capability to manage an asset. An assessment of their financial status, financial implications to the Authority, assessment of risks, contribution to corporate objectives, community benefits and sustainability of the business case will be required.

5.3. The Council's policy will be that asset transfers will be by means of leases and licences. Freehold transfer will only be considered in exceptional circumstances. The nature of tenure offered and whether to charge an open market consideration will be determined on a case by case basis.

5.4 In all cases involving transfer of ownership / occupation appropriate legal mechanisms will be put in place to protect the Council's financial position.

5.5. An evaluation appraisal will be carried out in each case by the Council's Corporate Asset Management Group (CAMG) to determine if one of the viable options for the asset is community transfer.

5.6 Asset transfer proposals will subsequently be taken to Finance and Property Committee in each case for approval.

Reason/s for Recommendation/s

6. To provide a clear policy framework to consider and support asset transfer from Nottinghamshire County Council to the Community and Voluntary sector organisations.

Statutory and Policy Implications

7. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

1) That Committee approves the *attached* Community Asset Transfer Policy.

Councillor David Kirkham
Chairman of Finance and Property Committee

For any enquiries about this report please contact: Andrew Stevens

Constitutional Comments (CEH 29.10.14)

8. The recommendation falls within the remit of Policy Committee.

Financial Comments (TR 21.10.14)

9. There are no immediate financial implications as a result of this report.

Background Papers and Published Documents

None

Electoral Division(s) and Member(s) Affected - All

File ref.: /SB/SB/09997
SP: 2743
Properties affected: 09997 – Policy

Appendix A

Community Asset Transfer Policy

1. Introduction and National Policy Context

1.1. Since 2007 a number of reviews and legislative provisions have been issued by Central Government with the stated aim of creating strong prosperous communities and delivering better public services. Governments view is that this can be achieved through a re-balancing of the relationship between Central Government, Local Government and local people by giving residents a greater say over local services.

1.2. Initially the Local Government White Paper "Strong and Prosperous Communities" was published in 2006, one element of which touched upon the transfer of property assets to the community. Asset Transfer was defined by the Department of Communities and Local Government as *"passing ownership or management of a building or piece of land from a public sector body to a third sector organisation".* This was followed in 2007 by the Quirk Review which looked at the issues around asset transfer and concluded that the transfer of assets to the community can work, by being clear as to the risks associated with the process and learning to manage them effectively, it can open up new sources of finance and extend the use of existing facilities to a wider community. The clear lead from Government was that local management and ownership of assets makes for strong communities with the objective being greater community empowerment.

1.3. This was followed in 2011 by the Localism Act which contained provisions that relate to assets of community value. These provisions came into force on 21 September 2012. The legislation provides communities with a right to bid for land or property which has valuable community use. The aim of these provisions is to give an opportunity for local community groups and social enterprises to be informed when an important local amenity/building comes up for sale and to provide time for local people to organise themselves so that they can bid to purchase the property, thereby preventing the loss of a facility/service that is considered important to that community. The act provides a framework for administering the scheme and the Regulations provide further details, a summary of these are set out in Appendix 1.

2. Purpose of this Policy

2.1. The use and occupation of Council owned premise by community groups is not new we currently have a variety of organisations ranging from voluntary support groups to sporting and youth groups based in Council owned buildings. The purpose of this policy is to build upon current experience and best practice and provide a transparent framework for responding to any requests for asset transfer including a set of criteria against which applications can be considered.

2.2. The objective is to enable applications from potentially a wide variety of organisations to be assessed and decide whether asset transfer supports Council and wider community objectives.

3. Principles of the Asset Transfer Policy

3.1. The policy is underpinned by the following principles:-

3.1.1. Any proposed transfer must support the aims and priorities of the Council

3.1.2. The Council will take a strategic approach to Corporate Asset Management Planning by reviewing its portfolio at appropriate times and undertaking option appraisals which will include examining the transfer potential of its assets.

3.1.3. The Council will adopt a transparent corporate process for asset transfer which will include a clear point of first contact and clear stages and timescales for each party.

3.1.4. The Council will adopt an agreed method of assessing the benefits of the transfer (linked to corporate priorities).

3.1.5. The presumption is that all disposals will be at market value. The priority will be to obtain the best outcome to support the delivery of Council objectives.

3.1.6. The Council does have the opportunity under the General Disposal Consents 2003 to sell or lease assets at less than best consideration in cases where it can be demonstrated that wellbeing benefits arise, this will require balancing the best price reasonably obtainable to support the capital programme against the benefits being offered through alternative use. Sales where the consideration is £2 million or more below best consideration, however, require Secretary of States consent. Councils are still required to meet their general fiduciary duty.

3.1.7. If any disposal at less than best consideration is pursued, it will be accompanied by a legally binding service level agreement (SLA) or other appropriate agreements identifying the benefits and how these will be monitored and measured.

4. Criteria to be Adopted for Considering Requests for Community Asset Transfer

4.1. Requests for the transfer of Council owned assets will be considered where the following criteria are met:-

4.2. The Applicant must:

4.3. Be community led organisation. i.e. its governance must ensure that it has strong links with the local community and that members of the community are able to influence its operation and decision-making processes;

4.4. Be a Voluntary and Community Sector organisation – i.e. it must be a legal entity which:-

4.4.1. Exist for community / social / environmental benefit

4.4.2. Be non-profit making it must reinvest any surpluses to further its social aims / community benefits

4.4.3. Have community benefit objectives

4.5. Be appropriately constituted, for example a registered charity, a community interest company, or charitable trust, a not for profit company. Such constitution allows for the management of buildings and provision of services.

4.6. Can demonstrate good governance by operating through open and accountable processes, with adequate monitoring, evaluation and financial management systems

4.7. Can demonstrate it has the skills and capacity within or available to its managing body to effectively deliver services and manage the asset

4.8. Embrace diversity and work to improve community cohesion and reduce inequalities

4.9. Engage in economic environmental or social regeneration in Nottinghamshire or is providing a service of community benefit in line with the Council’s core priorities.

4.10. Demonstrate experience in building management or a way of acquiring this

4.11. Include a specific plan on health and safety issues and compliance with legislation and any statutory requirements arising from management or ownership of the building and or running the service

4.12. Demonstrate how they will address any capacity building requirements within the organisation

4.13. Provide copies of accounts of the organisation

4.14. Details of the number of years they have been established and or details of their track record in delivering services

4.15. Be clear about what activities it wishes to deliver

5. **The Asset**

5.1. The asset is in the freehold ownership of the council.

5.2. An options appraisal has been carried out and approved initially by the Corporate Asset Management Group (CAMG) to identify that one of the viable options for the asset is community transfer. This process will be adopted in response to requests for properties identified through internal reviews.

5.3. The asset is not currently needed or identified for future investment or use for direct service delivery.

5.4. The Council considers that service delivery can best be provided through asset transfer and the transfer will support delivery of the strategic priorities of the Council.

6. **Proposed Use**

6.1. The proposed use will demonstrably help in the delivery of the council's community, corporate, needs and facilities for use by the people of Nottinghamshire

6.2. The proposed use would ensure extensive and inclusive reach into the community and will be open to all

6.3. The proposed use will maintain a wide variety of use in line with community needs and in the case of competing proposals, will best meet identified community needs. The decision of what is best will be judged by NCC.

6.4. The applicant has established how much space it requires to deliver its proposals and how they will make good use of such facilities.

6.5. Clear management structure demonstrating how of the premises will be managed on a day to day basis

7. Business Plan and Finance

7.1. Fundamental to the success of any transfer is the applicant (s) demonstrating to the council that they have a clear rationale backed by a robust business case of their ability to manage the asset effectively. This needs to include an assessment of the financial and organisational capacity of the organisation.

7.2. In putting forward proposals any applicant will need to:

7.2.1. Provide a viable business plan for their use of the asset including clear proposals, with identified funding plans and projections for at least five years of revenue and or capital funding, for the management and maintenance of the asset.

7.2.2. Clearly identify any sources of funding which the transfer will release or attract. The council will assist in the identification of external funding sources where appropriate.

7.2.3. Clearly identify any revenue or capital implications for the Council.

7.2.4. Clearly identify how it will invest in and maintain the asset, including a specific plan as to how Health and Safety responsibilities will be met.

7.2.5. Clearly identify the planned outcomes and benefits to result from the asset transfer and accepts that they may be expected to enter into agreements that link continued community governance with achievement of such outcomes and benefits.

7.2.6. Demonstrate a community governance structure with capacity to sustain asset transfer and have identified necessary capacity building requirements within their organisation and have identified the role (if any) they see for the council in this.

7.2.7. Indicate whether they would wish the Council to consider a phased transfer of the asset and agree milestones to justify progression to the next phase.

7.2.8. Indicate whether additional assets are required to provide viability to the proposal.

7.2.9. Indicate what support and guidance would be desirable in the management and maintenance of the asset.

7.3. Where transfer is requested at less than market value either freehold or leasehold the applicant has justified and quantified the benefits to the community and Council to justify the subsidy. The council will separately need to ensure that any transfer is within its legal and financial powers.

8. **Proposed Terms for Disposal**

8.1. In view of the diverse nature of assets within the Council's ownership, there is no one disposal or methodology that suits all circumstances. However as a general principle the policy will be that transfers will be by means of lease or licence. Freehold transfer will only be considered in exceptional circumstances. The nature of tenure offered will be determined on a case by case basis having regard to the particular circumstances of the project, strength of the applicant and sustainability of the business case etc. It is expected that the security of tenure to the applicant will be subject to improvement over time in accordance with the success of the project and the growing strength of the applicant in terms of community covenant capability.

8.2. For the applicant to complete the business plan and the elements above it will be necessary for the applicant and council to negotiate terms for the disposal of the asset. In addition to tenure these will include consideration, the user clause and covenant, responsibility for repairs and insurance, and arrangements in the event that the proposal fails and the property is to return to the council. The terms will define financial liabilities of the applicant for occupation of the property. In addition to guarantee continued provision of services a service level agreement is likely to be required to be entered into, linked directly to the lease such that failure to provide the services leads to lease termination. It is expected that best consideration will be achieved by the council in all disposals.

9. **Consideration by the Council**

9.1. Should an applicant meet all the criteria outlined in 4 – 7 above, then the application will be considered by the council.

9.2. Such consideration will include: -

9.2.1. A whole life options appraisal of the different alternative options available to the council weighing community benefit against other criteria

9.2.2. Risk analysis of the proposal

9.2.3. Consideration as to whether any revenue or capital funding requested from the Council will be made available, and whether any capacity building help can be provided.

9.2.4. The acceptability of the proposed terms of the transfer of the asset

9.2.5. Should the application be judged favourably following such consideration, a report will be taken to the appropriate council committee for decision on the proposal.

APPENDIX 1
A GUIDE TO THE LOCALISM ACT 2001 – LIST OF ASSETS OF COMMUNITY VALUE

This legislation places certain restrictions on an owner's ability to sell property which is classed as an "asset of community value." The restrictions mostly affect the **timing** of sales, but the County Council must follow the requirements of the Act when seeking to sell [or enter in to a long lease of 25 years+] on an "asset of community value".

"Assets of Community Value"

An "Asset of Community Value" [ACV] can be **land** or **buildings** or both. It can be in either **public** or **private** ownership.
An asset can be deemed of "community value" if it's existing main use is, or recently has been, to ***"further the social well being or social interests of the local community."***

Examples might include [not an exhaustive list] current or recent:-

- Schools
- Youth and community centres
- Libraries
- Sports fields
- Sports and leisure centres; swimming pools
- Public or community access land
- Theatres
- Museums and heritage sites
- Market halls
- "the village shop"
- "the village pub"
- cinemas
- town, civic and guild halls

Some land and property is exempt – land and buildings which are primarily residential, licensed caravan sites, operational land of statutory undertakers, land or buildings with *occasional* social benefit [e.g. space used for an annual village fete], or assets which might have community value in the future.

Register of Assets of Community Value

There is a statutory duty on local authorities [including District Councils, County Councils [in an area where there are no district councils, Unitary Authorities and London Boroughs] to maintain a **list/register of assets of community value.**
In Nottinghamshire, this will be the City Council in respect of the unitary authority area and the various District Councils for the rest of the County.

Each local authority can determine the format of the List, but it should be made publicly available. The Listings should also feature on the Register of Local Land Charges for any listed property, so ought to be revealed in a Local Land Charges search.

Nominating an Asset of Community Value

Nominations of assets to be included on the list must come **from the community itself** from an eligible voluntary or community body. These are defined as:-

- An unincorporated group of 21 or more people who appear on the local electoral register
- A legally constituted community interest group e.g. charity, Community Interest Company, an industrial or provident society or other not for profit organisation
- A Parish Council
- A neighbouring parish council if it borders an area without a parish council

Once a nomination is received the local [i.e. District] council has up to eight weeks to decide which assets to list. The eligibility criteria are listed in the Act. The Council must notify the owner and any occupiers of its intention to list.
If the nomination is not approved, the council must write to the nominator, with reasons. There is no right of appeal.
An owner can request a review of a listing decision within 8 weeks of that listing. The owner has a further right to appeal a listing to a First Tier Tribunal if the listing still stands after the initial review.
Once listed, an asset remains on the Register for 5 years, but can be re-nominated at the end of that period.

Attempting to Dispose of a property on the register of Assets of Community Value

Once a property is listed as an ACV, the owner is NOT prevented from marketing the asset, BUT…

… the owner must **notify** the council which keeps the list of its wish to sell the freehold or enter in to a leasehold interest of at least 25 years.

This notification triggers the "**Community Right to Bid"** [see below]

"Community right to Bid"

Once the wish to dispose is notified, any "community interest group" [this is more narrowly defined than the list of bodies who can apply for the listing] will have **six weeks** in which to lodge a **non-binding expression of interest** to bid for the asset.

If such an expression is lodged, then there is a further period of **four and a half months** comes in to play [making a total of **six months** in all] during which time the owner is **PREVENTED** from entering in to any contract for the disposal of the land. [NOTE: the owner is NOT prevented from marketing during that 6 month moratorium, nor from holding negotiations with any other party, but cannot EXCHANGE CONTRACTS for a disposal with any party.

The purpose of the six month moratorium is to give community interest group the time in which to prepare a bid of its own, securing approvals to bid, external funding etc.

Is the owner under any obligation to sell to a community interest group which submits a bid?

NO. The owner is under NO OBLIGATION to sell to any community group which bids, nor any other party for that matter. The owner may choose to sell to the community group within the six month moratorium period but is under no compulsion to do so. The community interest group has no right to buy for less than the market value if the vendor is unwilling to sell.

Any subsequent sale [after the 6 month moratorium] can be under normal market conditions, whether to the community interest group or any other potential buyer. All the normal methods of sale are available to the owner, including private treaty negotiations, formal or informal tender, "best offers" or auction. Thus, the owner would be entitled, for example, to sell the property at auction immediately after the 6 month moratorium closes [but not before] and the community interest group would have to bid at the auction as would any other interested party.

Remaining on the Register of "Assets of Community Value"

A listing, once made, remains in place for 5 years, but an application can be brought for – re-registration after that period.

If the community group has not successfully acquired the asset after the six month moratorium period, then the owner is afforded a "protection period" of 12 months, during which time the owner may dispose of the asset in the open market without recourse to the restrictions of the Act. This is to protect the owner from the danger of repeat [spurious] attempts by community groups to thwart the sale of assets.

Implications for NCC Property Team

For community groups this is NOT a "right to buy" but it is a "right to [prepare/submit] a bid" for certain listed "assets of community value". As such, these provisions ought not to thwart an intention to sell, but they may DELAY sales and could have timing implications for the receipt of disposal proceeds, budgetary planning etc.