



Leicester
City Council

**WARDS AFFECTED:
ALL WARDS**

CABINET

3 MARCH 2008

POLICY FOR TRANSFER OF ASSETS FOR COMMUNITY GOVERNANCE

Report of the Corporate Director of Resources

1. Purpose of Report

This report proposes an addendum to the existing Framework for the Disposal of Property to deal with requests for transfer of assets for community governance.

2. Summary

The attached paper outlines the background to current Government thinking on the transfer of property assets for community governance and outlines criteria against which the Council should judge any proposals received.

3. Recommendations

It is recommended that Cabinet approve the proposed addition to the Framework for the Disposal of Property of the Policy for Transfer of Assets for Community Governance as attached to this report.

4. Report

4.1 By adoption of the policy the Council will be providing a clear and consistent approach to this issue fundamentally based upon proposals meeting corporate priorities, coupled with the communities governance and asset management capability and capacity, but incorporating the flexibility to deal with the wide range of proposals that may arise.

4.2 It is to be noted that further guidance is expected from the Quirk Review team on their proposals for implementation of asset transfer and should this require amendment to the policy this will be brought back to Cabinet.

- 4.3 Consultation on the Policy has been undertaken through the Overview and Scrutiny Management Board at its meeting on 11 December 2007 and with the voluntary sector through Voluntary Action Leicester.
- 4.4 At Overview and Scrutiny Management Board, Members expressed support for the proposals but suggested that the report did not convey a sense of enthusiasm for the possibilities of asset transfer and that the principle of 'best consideration' as applied was restrictive especially in relation to the treatment of the disposal of freehold. It was suggested that in some areas Councils had decided to allow the community to take over the freehold but covenants had been inserted to protect the asset for the community in the future by giving a Council a right of 'buy back'. In response it was stated that freehold was not ruled out but the intention was to seek to protect the Council's interests in unforeseen future circumstances. For example, whilst a covenant could be inserted it may not be in the Council's best interests at that point to buy back a building. Overview and Scrutiny Management Board resolved to note the report.
- 4.5 Consultation with the Voluntary sector was undertaken through Voluntary Action Leicester who facilitated the collection of views on the draft policy. One response was received directly from a community group and on behalf of the sector, Voluntary Action Leicester have commented as follows:
- "My own assessment having read the policy is that the requirements of the authority are onerous and that little benefit will be derived for the organisation other than security of tenure. The asset could not be used to secure loans and mortgages to develop an organisation as or on social enterprise principles and will be of very limited benefit to VCS groups. If I were advising a group that wished to acquire an asset I would advise them to look at a straight forward purchase to enable them to capitalise it in raising loans or as something that can be realised if needs be to keep an organisation going should the choice ever need to be made to close or dispose of the asset to keep an organisation going."
- 4.6 Should the Policy be approved, it is intended that a guidance note will be produced to inform the community sector of the Councils' requirements regarding asset transfer.
- 4.7 Members are asked to note that the Council has been successful in its application to be part of the second phase of the CLG run 'Advancing Assets for Communities' pilot programme which is seeking to demonstrate in selected areas how local authorities and local community led third sector organisations can be supported to develop joint plans for asset transfer in line with the recommendations of the Quirk Review. The Council have put forward Highfields Centre, Outdoor Pursuits Centre and Cort Crescent Community Centre as pilot projects and will now benefit from guidance and advice from the Development Trusts Association and in particular will be able to learn from the experiences of the first wave of demonstration projects.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications – (Nick Booth, extn. 297460)

Any assets transferred to community organisations by lease would forego any possibility of the Council receiving capital receipts to fund its own capital programme. However, where assets have a minimal open market value, this may not be a material consideration.

5.2 Legal Implications – (Lawrence Mawson, extn. 296347)

Until such time as the Council have specified the preferred method of disposal, it is not possible to evaluate the full extent of any legal implications. Each of the methods referred to in paragraph 3.6.1 have their own advantages and disadvantages, which should be judged on merit on a case by case basis. It is proposed that legal advice will be ongoing in support of the Council's disposal policy.

Each disposal will have to be looked at on an individual basis. Notwithstanding the fact that the Council may approve a policy for the Transfer of Assets there may be issues regarding the question of vat, public procurement and TUPE which may prove problematic for both the Authority and the Voluntary Sector. It is appreciated that not all of the above will apply in every case. Organisations requesting a transfer must be made aware that the adoption of the policy may not produce a quick fix and that the resolution of the above matters may take a considerable length of time depending on individual circumstances.

6. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	NO		
Policy	YES	Paragraph 4	
Sustainable and Environmental	NO		
Crime and Disorder	NO		
Human Rights Act	NO		
Elderly/People on Low Income	NO		

7. Background Papers – Local Government Act 1972

None.

8. Consultations

Roy Roberts - Policy Officer
Steve Goddard - Head of Community Services
John Garratt - Head of Planning Property and Procurement
Mark Mizzen - Social Economy Development Officer
Liz Blyth - Cultural Strategy and Improvement Manager
Voluntary Action Leicester

9. Report Author

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Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)

POLICY FOR TRANSFER OF ASSETS FOR COMMUNITY GOVERNANCE

1. Background

- 1.1 The Local Government White Paper 'Strong and Prosperous Communities' published in Autumn 2006, sets out a new relationship between local government and its communities based on devolution of power by giving residents greater say over local services.
- 1.2 One element touched upon was that of the transfer of property assets to the community based upon the view that there are realisable benefits to be obtained from giving the community a greater stake in their area.
- 1.3 On the back of this Barry Quirk, Chief Executive of Lewisham Council, has led a review team into the issues around asset transfer and the report was published in May 2007.
- 1.4 In essence the report is clear that what is required is not legislation but guidance, helping in the understanding and use of existing powers, being clear on risks associated and learning to manage them effectively. The clear lead from government is that local management and ownership of assets makes for strong communities. The objective is for community empowerment.
- 1.5 The main specific element is for asset management planning to have a strong community focus and Councils will be expected to fully consider the benefits of asset transfer within the asset management planning process. Further guidance on this will be forthcoming later in 2007.
- 1.6 Quirk perceives that Councils either do not fully understand the existing powers available to them or are unwilling to use them due to apparent risks involved, problems of being fair to all parties and financial constraints. The clear intention is that Councils be encouraged to face these issues as the underlying principle is that asset transfer to the community can work and the report includes many examples to try and prove this point.
- 1.7 Two options open to communities who wish to have assets transferred to them, and which are highlighted in the report, are the 'Community call for action' and 'Public Request to Order Disposal' (PROD). The former would allow groups to progress desires for asset transfer to Scrutiny Committee for review and the latter is an existing mechanism by which the public may ask the Secretary of State to direct authorities to dispose of property assets which are either not being used, or not being efficiently used for the performance of their functions. Both these options will empower local communities to approach Councils to purchase, lease or manage property assets.
- 1.8 In the light of the report the Council must be fully prepared to deal with applications from the local community for the transfer of assets and therefore need a clear policy framework against which such applications should be judged.

- 1.9 Beyond the principles within Quirk there is very little clarity or detail in terms of defining communities, suitable community groups etc partly due to the range of public authorities that the report covers.
- 1.10 The report does make it clear though that it expects transfer of assets not liabilities. In view of the lack of detail it is necessary for Councils to make their own judgements based on the needs of their own circumstances and it is recommended that the Council seek to introduce an approved policy in relation to asset transfer including a set of criteria against which applications can be considered.

2. Existing Disposals Policy

- 2.1 The Council's policy towards the disposal of property is found within the 'Framework for Disposal of Property' which was approved by Cabinet in October 2003. This identifies that, as a general principle, sales of Council property will be carried out through open marketing to ensure equality of opportunity for all to purchase, transparency by the Council in its disposal of assets and compliance with current legislation. Incoming receipts then feed the Capital Programme which is a reflection of Members' priorities for investment.
- 2.2 The Framework does identify five different cases in which one to one sales to a particular purchaser at market value can be considered (de minimus sales, sales to special purchasers, support of regeneration, to support schemes of regional or national importance and to parties who can provide Council services). Sales under these criteria would normally require Cabinet approval.
- 2.3 Within the Framework it is outlined that under the General Disposal Consent 2003 Councils do have the power to sell at less than best consideration in cases where well being benefits would arise. Sales where the consideration is £2million or more less than best, however, require Secretary of State's consent. Councils are still required to meet their general fiduciary duty.
- 2.4 Due to the difficulties of precedent and the issue of hidden subsidies in property transactions, the Council have only used this consent sparingly.
- 2.5 It is felt that requests for community asset transfer will not fit comfortably into the existing Framework and therefore the following criteria are to be adopted to enable all such requests to be judged on a similar basis. It is not felt that the Disposals Framework needs amending as such but the criteria be added as an appendix.

3. Criteria to be adopted as policy towards requests for Community Asset Transfer

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

3.2 The applicant

3.2.1 The applicant is a community led organisation.

3.3 The asset

3.3.1 The asset is in the freehold ownership of the Council.

3.3.2 The Council is comfortable that service delivery can be best provided through asset transfer and will deliver the strategic priorities of the sponsoring department.

3.3.3 The asset has been identified as available for community transfer in the Council's Asset Management Plan (AMP).

3.4 Proposed use

3.4.1 The proposed use will demonstrably help in the delivery of the Council's community strategy, Corporate Plan and will build an active community.

3.4.2 The proposed use will ensure extensive and inclusive reach into the community.

3.4.3 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.

3.5 Business plan and finance

3.5.1 The applicant has provided a viable business plan for their use of the asset including clear proposals, with identified funding, for the management and maintenance of the asset.

3.5.2 The applicant has clearly identified any sources of funding which asset transfer will release.

3.5.3 The applicant has clearly identified any revenue or capital funding implications for the Council, and in the case of revenue the proposed length of time of the commitment and proposals for how the applicant will seek to end the Council's commitment through funding from elsewhere.

3.5.4 The applicant has clearly identified how it will invest in and maintain the asset, including a specific plan as to how all Health and Safety responsibilities will be met.

3.5.5 The applicant has clearly identified 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.

3.5.6 The applicant has demonstrated a community governance structure with capability to sustain asset transfer and has identified necessary capacity building requirements within their organisation and has identified the role they see for the Council in this.

3.6 Proposed Terms for Disposal

3.6.1 For the applicant to complete the business planning elements above it will be necessary for the applicant and Council to negotiate terms for the disposal of the asset. These will deal with tenure (freehold, leasehold or licence), consideration, user clause and covenants, responsibility for repairs and insurance and arrangements should the proposal fail and the property is to return to the Council. The terms will define the financial liabilities of the applicant from 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.

3.6.2 In view of the range of assets within the Council ownership it is unlikely that there will be any disposal methodology which suits all circumstances. However, as a general principle, the policy will be that disposals will not be on a freehold basis, with leases or licences preferred, and it would be 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 governance capability. Freehold disposal is generally not supported in particular due to issues arising should community governance fail. In a leasehold situation the Council would be in a better position to reclaim the property on behalf of the citizens of Leicester than should the freehold have been sold. Also leasehold allows for a continued partnership with the community. It is expected that best consideration will be achieved by the Council in all disposals.

4. Consideration by the Council

4.1 Should an applicant meet all the criteria outlined in 3.2 – 3.5 above, then the application will be considered by the Council.

4.2 Such consideration will include:-

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

4.2.2 A risk analysis of the proposal.

4.2.3 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.

4.2.4 The acceptability of the proposed terms for the transfer of the asset.

4.3 Should the application be judged favourably following such consideration a report will be taken to the Council Cabinet for decision on the proposal.