

Report of the Strategic Director Corporate Resources to the meeting of the Executive to be held on 8th September 2020

CC

Subject: Review of the Council's Community Asset Transfer Policy and Assets of Community Value process

Summary statement: The Community Asset Transfer policy and process was last considered by Executive in 2015 and has been reviewed and updated.

The Assets of Community Value process was last considered by Executive in 2012 and has also been reviewed and updated.



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Overview & Scrutiny Area: Regen &
Environment

1.0 SUMMARY

- 1.1 The Community Asset Transfer policy and process was approved by the Executive in 2015 and the Assets of Community Value process was approved by the Executive in 2012. This report sets out proposed changes to update both policies and processes and seeks Executive's approval to both.
- 1.2 In addition, on the 19th March 2019, Full Council requested that the Executive considered four matters regarding Community Asset Transfers, and this report addresses each of the matters raised.

2. BACKGROUND

2.1 Local community organisations have, over the years, been interested in land and building assets within their local communities. Two key documents have furthered these interests and driven developments in the field of community asset ownership:

- The Quirk Review "Making Assets Work" was published in 2007 and set out a number of recommendations to enable and promote community asset transfer and was the catalyst for central government, local authorities and the third sector to promote the transfer of public sector assets into community ownership.
- The Localism Act 2011 introduced the Community Right to Bid, and through the right gives eligible local community organisations the ability to list land and property which meets the necessary criteria as an Asset of Community Value and if listed by the local authority gives community groups a period of time to put together a bid to buy the property.

2.2 Community Asset ownership has been a successful tool in driving forward community regeneration and there are numerous examples nationally of communities successfully managing properties to deliver services to the benefit of their communities. This is true in Bradford and examples of successful Community Asset Transfer projects include:

- South Square, Thornton - South Square has been run as a successful community and arts centre by Thornton and Allerton Community Association since 1982. The centre hosts community events and activities for all ages, including an ongoing workshop programme and provides community spaces available to hire. The Association required a new longer lease so they could apply for external funding and approached the Council about a Community Asset Transfer. After going through the required stages a successful Community Asset Transfer was completed on 20th December 2019. This has enabled the National Lottery Heritage Fund award the Association a grant of £561,000 to undertake a capital refurbishment of Grade II listed buildings as well as a three-year programme of heritage activities enabling an exciting activity programme of events, traineeships, workshops and exhibitions. Altogether the Community Asset Transfer has enabled the Association to secure almost £1m of funding.
- Great Horton Village Hall - In 2013 Great Horton Village Hall became vacant and back into Council control. The Council initially ran the building as a community centre and library whilst working with the local community on plans for them to take

over the facility. A local charity, Red Letter Project, were chosen as the preferred community organisation and they applied for a community asset transfer in 2016. Red Letter Project took over from 1st January 2018 and now run the village hall for the benefit of the local community, working with people of all ethnicities and ages. They manage the library and have expanded to deliver much needed child care in the area. Red Letter Project are working with Grow Bradford who have created community gardens around the premises in an area lacking green space. With start-up support from across different Council service a sustainable self-funding community managed facility has been created in an area of economic deprivation which helps support the community and provides much needed local services.

Community Asset Transfers

- 2.2 In July 2015, Executive resolved to adopt an updated Community Asset Transfer (CAT) policy and, during the intervening period, Community Asset Transfers have become increasingly popular. Since the introduction of the CAT policy, 36 projects have successfully transferred to community organisations with another 63 projects at various stages of the community asset transfer process. The number of 'live' CAT projects is believed to be the highest for any local authority in the country.
- 2.3 In the five years since the original policy was approved, a number of lessons have been learned by both the Council and the local community sector. To continue the proactive approach and deliver projects successfully, a review of the Community Asset Transfer Policy was required and has now taken place. A revised Community Asset Transfer policy has been drafted and is attached at Appendix 1. The main amendments include:
- The previous policy limited lease lengths to 25 years with longer terms only to be granted by exception. The new policy takes a more flexible approach suggesting a lease term of 25 years, up to 39 years if required. Longer leases will still be available by exception as set out in the attached policy document.
 - The process in 2015 was in three stages, this has been increased to 4 stages with appropriate gateways at the end of each stage. The revised process map is set out in Appendix 2.

Assets of Community Value

- 2.4 The Localism Act 2011 introduced Assets of Community Value under which local community groups and parish councils are able to nominate privately and publicly owned land and property for inclusion on the List of Assets of Community Value. The list is maintained by CBMDC which is also responsible for managing the process to determine whether a nomination of a property as an Asset of Community Value is successful and for administering the processes in relation to keeping the list. The Executive resolved at its meeting 6th November 2012 that Area Committees should recommend a determination of the nomination to the Director of Corporate Services who will make the decision.
- 2.5 The listing of land or property as an Asset of Community Value has the effect of preventing an owner from disposing of their listed property without first notifying the Council of their intention to sell. The notification of intention to sell 'triggers' a six

week moratorium on disposal during which local community groups and parish councils are able to express an interest in bidding for the property. If no expressions of interest are received, the owner is free to dispose of their property at the end of the six-week period. If an expression of interest is received, the initial six week moratorium extends to six months to allow community groups and parish councils to prepare to bid for the property or to negotiate with the property owner. At the end of the six-month period the owner is able to sell the property to whoever they want and by whatever means they wish. If the property is not sold within 18 months of the notification of intention to sell, the disposal process must start again. Once sold the property is removed from the list.

2.6 The Community Right to Bid provisions do not:

- Give community groups or parish councils a 'right of first refusal' when listed land and buildings come up for sale.
- Give community groups or a parish council the right to purchase land and property listed as Assets of Community Value at a reduced price i.e. less than market value.
- Compel a property owner to sell to a community group or parish council. Once the procedures set out in the Act are complied with, property owners are free to sell their property to whomsoever they wish.
- Restrict how a property owner can use their property.

2.7 Regulation 7 of the Assets of Community Value Regulations (England) 2012 states that nominations must be assessed within an eight-week period. At present it takes the Council an average of 11.2 weeks to assess a nomination, with only 34% being assessed within the statutory deadline. In one case it took 25 weeks for the nomination to be assessed. Although there is no penalty for failure to meet the deadline, there are potential repercussions. For example, the council could be criticised at a future review or appeal for failure to comply with the deadline. Of a greater risk is the possibility that a transaction takes place after the eight-week statutory deadline period but before a decision has been taken on a nomination. In such circumstances there would be no restriction against the property because the protection provided by listing as an Asset of Community Value only applies once a decision has been reached and the property added to the list. In such circumstances the Council would undoubtedly receive criticism from the nominator and there would be potential for reputational damage.

2.8 The main change proposed to the assessment process is to remove the need to consult Area Committee whilst strengthening the input from the Portfolio Holder and Ward Members.

3. OTHER CONSIDERATIONS

Community Asset Transfers

3.1 The policy attached at Appendix 1, goes into greater detail about the proposed approach to Community Asset Transfers. This has been drafted by the Strategic Asset Management Service with input from Legal Services, Finance, Parks, Neighbourhoods and the Administrator of the Council's Trusts. External consultation has also taken place with input from 14 community groups who are

currently, or have previously been involved in the Community Asset Transfer process, as well as a number of third sector support organisations including Locality, CABAD and Power to Change as well as Elected Members.

- 3.2 The main themes emerging from the consultation process directly relating to the policy and the main proposed amendments are as follows:
- 3.3 **Length of lease and proposal to offer a standard term of 25 years, which may be extended up to a maximum term to 39 years:** 67% of respondents were concerned that the proposed maximum term of 39 years would not be sufficient in length for groups to develop a realistic business/funding model and that the term of the lease needs to reflect the investment which might be required in the property and any additional requirements of banks and funders. There were also concerns that the proposed term was not consistent with the lease lengths that other local authorities were offering.
- 3.4 The proposed lease term for longer leases will be 25 years and no longer than 39 years has been chosen, because it reduces the risk of the tenants applying to change the User Clause in leases in excess of 39 years. Under section 84 of the Law of Property Act 1925, tenants who have a lease in excess of 40 years can after 25 years apply to the Upper Lands Tribunal to vary or remove a 'User Covenant', including any community use clause, to some other non-community use such as commercial or residential use. Such a risk was highlighted in the recent case of Shaviram Normandy Ltd v Basingstoke and Deane Borough Council in 2019, in which the Upper Tribunal allowed the modification of a purpose-built office building's leasehold covenant, to permit a change of use to a residential building.
- 3.5 Enquiries have been undertaken with the major third sector funders and the longest stated security of tenure requirement requested was for a lease term of 25 years. One funder required security to be for five years longer than the term of repayments.
- 3.6 Therefore, after considering that there is a risk to relying solely on a 'User Clause', to provide protection to the Council, albeit a limited one, and that as a matter of course, funders do not require the longer terms as fed back during the consultation process, it is proposed that Community Asset Transfer leases will generally be for a term of 25 years with longer leases granted up to 99 years, by exception. The tenant's requirement for a longer lease term of in excess of 40 years will need to be balanced at all times with ensuring that the property remains available for the benefit of the community.
- 3.7 The lease will include standard forfeiture provisions to enable to the Council to forfeit the lease for example for non-payment of rent, breach of covenants and insolvency. Forfeiture for insolvency will need considered in each case and may need to be tailored, for example providing funders with 'Step In' rights to accommodate particular funding requirements. Mutual break clauses or Council break clause may also be included as appropriate. Although generally, from enquiries made, funders will not secure funding against leases which contain break clauses, including some of the more common funders for Community Asset Transfer projects, such as the National Lottery Heritage Fund. This will be considered on a case by case basis and if required, the drafting of any break clause

will need to address funders concerns, for example a break clause cannot be triggered until the project life of the funding has expired.

- 3.8 It is also important to ensure that the tenant of a Community Asset Transfer has robust governance structures in place to protect the use of any asset, such as an 'asset lock'. An 'asset lock', is a legal clause that prevents the assets of an organisation being used for private gain, rather than the stated purposes of the organisation.
- 3.9 **Timescale:** 39% of respondents suggested that there was a lack of detail around indicative timescales built into the policy and process. Other comments received indicated protracted negotiations relating to lease terms have affected/will affect timescales, which have/will lead to delays.
- 3.10 Each Community Asset Transfer takes a different length of time and depends upon each party being able to respond to questions raised and to come to a mutual agreement over any issues which may arise. Transfers usually take at least a year depending upon the availability of resources. All property transaction negotiations are unique and bespoke, and this is particularly true of Community Asset Transfers. At the moment there is a particular sensitivity around this issue due to a number of projects being delayed whilst the new policy is being developed and approved.
- 3.11 **Automatic renewal of lease at end of agreed term:** 33% of respondents commented that they would be fearful of losing the asset if the lease was 'contracted out' of the 1954 Landlord and Tenant Act, including the loss of right to any compensation. For example, all of Leeds City Council CAT's are 'contracted out'.
- 3.12 By virtue of a lease being 'contracted out' of the 1954 Landlord and Tenant Act, it does not mean that a new lease will not be granted, what it does, is provide flexibility when new terms are being negotiated to meet the circumstances relevant at the time. The Council will be able to decide whether a new lease is to be granted towards the end of the original term. This approach provides a good balance between providing long term security of tenure to the community organisation whilst allowing the Council the ability to retain a degree of control around the asset's use at some future point in time, when circumstances may have changed. It is proposed that all new Community Asset Transfers will be based upon leases which are contracted out of the 1954 Landlord and Tenant Act.
- 3.13 **TUPE:** 33% of respondents commented that it was important to avoid issues and liabilities associated with TUPE unless the Council were prepared to underwrite the costs of associated employee salaries, pensions and redundancy costs as part of the transfer.
- 3.14 Where staff are employed at premises to be transferred, Transfer of Undertakings (Protection of Employment) Regulations (TUPE) applies, and the Council has to comply. However, the Council will work with affected staff to redeploy these where ever possible, in order to mitigate future liabilities of community organisations taking over premises, whilst protecting staff's rights.
- 3.15 **Other issues:** Having consideration to the feedback received from the

consultation, the wording of the policy has been amended so it is more community orientated and the following adjustments have been made to the proposed terms of future transfers:

3.16 **Funder's ability to dispose of a property:** If when lending or granting money a funder or mortgagor requires as a 'last resort' to be able to 'step in', to take control and assign the lease in order to recover their loan or grant, in such a case, there is a risk that properties could ultimately transfer to commercial operators. This risk is mitigated by the 'User Clause' in the lease. However, managing such risks increases with leases in excess of 39 years as referred to in paragraph 3.4 in this report. With a restriction on Title the Council's consent will be required for registration of any mortgages, which would prevent any unauthorised mortgage of the property being registered on the title of the property.

3.17 **Rental:** Community Asset Transfers under the policy provide community bodies with an opportunity to apply for a Community Asset Transfer of certain Council owned assets, and depending on individual circumstances, this could include a lease at a subsidised rate (often at a peppercorn rent) which would be subject to assessment as set out in this policy and compliance with relevant legislation that relates to the disposal of land.

3.18 **Full Council 19th March 2019**

On the 19th March 2019, Full Council requested Executive to consider the following proposals:

1. An affordable loan product making use of the Council's Prudential Borrowing powers and drawing on the successful model developed for Cullingworth Village Hall.
2. A 'toolkit' for local groups considering asset transfers or development projects that provides advice on planning, licensing, building control and the Council's approach to using its assets for community purposes.
3. Options for applying Community Infrastructure Levy (or other proceeds from planning gain) to the development of new or transferred community facilities.
4. A plan for raising awareness of finance options and opportunities throughout the District's voluntary and community sector.

3.19 **Affordable Loan Product:** There are a variety of loan and grant funders for the third sector which often support Community Asset Transfer proposals and which are set up to support community activities. These offer financial support at affordable rates. It is considered that providing an additional source of funding to these could lead to overcrowding the market and is not required. Furthermore, the Council is carrying the risk in terms of the value of the property invested in any Community Asset Transfer and providing additional financial support through a loan would increase that risk. In addition, social lending is often secured against the value of the property, but if the Council was the lender it would be securing against property which it already owned, so it would effectively be providing an 'unsecured

loan', and would receive no benefit from securing finance provided to a third party against that property.

- 3.20 **Toolkit:** The Community Asset Transfer Team launched a CAT Toolkit and Diagnostic Questionnaire in June 2018 to assist community groups through the CAT process. The new policy makes clearer how the Council uses its assets to support community purposes. A supplementary guide to supporting community groups on how they access such services as planning, licencing and building control is being prepared. Other supplementary guidance, which has been prepared for community groups, include a 'Quick Guide to Community Asset Transfer for community organisations' and 'Handover of Asset Checklist for community organisations'. The CAT Team have also prepared a 'Community Asset Transfer Utility Pack' which contains information to help community groups manage the sites utilities and have also liaised with Yorkshire Purchasing Organisation, allowing access for community organisations to the Council's energy contract; however, organisations should always check tariffs and make their own enquiries with alternative suppliers.
- 3.21 There is a significant degree of support available from third sector support organisations to groups undertaking community asset transfer projects, both nationally via organisations such as Locality, and locally through CABAD.
- 3.22 **Community Infrastructure Levy (CIL):** CIL is payable if a development is CIL liable. CIL liable developments for Bradford are all dwellings, supermarkets over 2000sqm and retail warehousing in Bradford City Centre only. The amount payable is dependent upon the location of the development and there are four CIL zones which range from £0 per sq m to £100 per sq m.
- 3.23 CIL is payable upon the commencement of the development and is placed in a central 'pot' to fund infrastructure across the District. However, before spend is agreed, 15% of all CIL receipts are transferred to the Parish Council, Town Council or Ward where the development occurred. This sum is to then be used by the Parish, Town and Ward to encourage growth in their area. The remaining 85% then has 5% deducted and transferred to Planning to help cover the costs of administering CIL, and the amount left in the 'pot' is then used to fund infrastructure items on the Regulation 123 list, which includes things such as education, recreation, habitat mitigation and drainage schemes.
- 3.24 The decision of how to allocate the CIL funding is made by Executive annually. So far there have been two allocations by Executive and they resolved to split it between education, recreation and open space, habitat mitigation (to fulfil EU legislation the Council has to abide by) and green infrastructure, a small amount was then left in the CIL 'pot' to be built upon, in case any larger infrastructure projects came about.
- 3.25 CIL money, like S106 monies, is to be used in the main on capital spend and not revenue. The Council is unable to support the use of CIL funds on Community Asset Transfers as they are not listed on the Council's Regulation 123 list, they are not facilities the Council can ensure will remain open and available for the general public to use.

3.26 Both CIL and S106 funding is prescriptive in what it can be used for and using it a way which does not comply with regulations and legal agreements will place the council in a very vulnerable position which could result in Court action and judgement that the funding has to be paid back if it has been used for an inappropriate spend.

3.27 **Awareness of Finance Options:** As part of Power to Change strategy for community business at the heart of local change, the Council, as one of a limited group of authorities, has been invited on to the Sustainable Community Asset Ownership Capacity Building Programme which includes 'mentoring' by Locality for the Council and community organisations. The programme includes:

- Needs analysis of local priorities to design a bespoke programme for each place
- Review/input into the development of policy/strategy/procedures
- A series of events to support Council officers and Members, voluntary organisation support officers and individual community organisations
- Review of Assets for potential disposal and establish opportunities
- Signposting to open grants programmes to support the pipeline of asset transfer applications

It is anticipated that the programme will have long term benefits for the Council and community and amongst other things will increase awareness of financial options as well as building and enabling capacity in the third sector. The first event is due to take place in Autumn 2020.

Assets of Community Value

3.28 The Council has no control over when Assets of Community Value nominations are received and delays can be incurred when a nomination is received at a time which doesn't align with an upcoming Area Committee, or if the next committee meeting is to be rescheduled. This has often led to the statutory eight-week deadline for assessing nominations being missed and to date in Bradford only 34% on nominations are assessed within this deadline. A new approach is therefore required to improve performance in this area. Clearly the views of Elected Members are very important in assessing Assets of Community Value nominations, but an alternative method of seeking their input is needed to ensure 100% compliance within the statutory eight-week deadline.

3.29 To ensure elected members have the opportunity to continue to comment on Assets of Community Value nominations, a revised process is proposed, whereby Ward Members for the Ward in which the nominated property is located and the Portfolio Holder are notified by email of nominations which pass an initial eligibility check at the early stages of assessment. Those Members will be given the opportunity to comment and can request a copy of the nomination form and supporting documentation if required. Any comments received will be noted in the report which will be produced recommending listing or otherwise.

3.30 In order for Area Committees to be kept apprised of developments with Assets of Community Value in their areas, it is proposed that an annual report be submitted to each committee updating on nominations received and the outcome of those nominations, as well as any other pertinent information.

- 3.31 The Chair of each of the Area Committees has been consulted on this amendment and no comments received in response either supporting the proposed changes or otherwise.

4. FINANCIAL & RESOURCE APPRAISAL

Community Asset Transfers

- 4.1 Clearly Community Asset Transfer projects have an 'Opportunity Cost' to the Council. In most cases an alternative option would be to dispose of the property on the open market and receive a capital receipt or to generate revenue, nor would the land be available for another Council use. The Council will therefore need to take into account its long term strategic and operational considerations as well as financial considerations, when making the decision on whether to grant a CAT on a particular property. Each CAT approval report will include a valuation prepared by a RICS registered valuer identifying the value of the Capital Receipt to be foregone.
- 4.2 Community Asset Transfer leases typically include the transfer of repairing and insuring obligations along with occupational costs to the community organisation. Although this has a financial cost for the community organisation, such costs need to be included in the business plan and the implications accounted for to ensure that the proposed transfer is viable and sustainable, transferring these obligations to the community organisation provide for future savings to the Council's planned and reactive maintenance budgets.
- 4.3 Where a proposed CAT will result in a loss of income to an internal service. This needs to be discussed with the relevant service and agreement made with Estates as to how this income loss will be mitigated. All budget gaps as a result of a CAT will be documented and agreed prior to completion of stage 1. CATs should be financially self-sustaining, as there is no budget to subsidise this activity.
- 4.4 In recent times we have provided limited financial support to organisations at the point they successfully take over a property as part of the CAT process. This support is typically used to cover items such as professional fees or minor repairs and is capped at £1,000. This support will continue subject to budgetary availability.

Assets of Community Value

- 4.5 There are no financial implications arising from Assets of Community Value and the administrative workload has been absorbed by the Strategic Asset Management Team.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 Community Asset Transfer of assets contains a degree of risk, as transfers are usually to small community organisations who do not have large cash reserves and may be inexperienced in managing commercial properties. Risks are reduced by a thorough evaluation process to ensure that any proposed transfer is viable and

sustainable before it can progress. Once a transfer is completed there will be on-going monitoring and the creation of a network of support will assist.

- 5.2 The grant of a lease on land and property is the grant of the right to exclusive possession of land to the tenant for the duration of the lease and there are risks surrounding the Council's ability to ensure that the leased property remains available for the community use it was originally intended. These risks will be mitigated through a combination of lease provisions including break clauses, user clauses, forfeiture and usually restricting lease lengths to no more than 39 years as set out in detail in paragraph 3.
- 5.3 The financial risks associated with Assets of Community Value are around the possibility of claims for compensation to cover costs incurred by landowners which can lead to the Council having to pay compensation. However, to date there has not been a successful claim against the Council.

6. LEGAL APPRAISAL

6.1 Community Asset Transfers:

- 6.1.1 The Council's Community Asset Transfer policy is a voluntary process of disposing of assets to community organisations.
- 6.1.2 The proposed disposals in the policy is by way of lease and often this will be by way of long leases normally for 25 years.

Please note: The grant of a lease to land and property is the grant of the right to exclusive possession of land to the tenant for the duration of the lease. Exclusive possession is an essential ingredient of a lease; without exclusive possession there can be no lease. Exclusive possession is the right to use the land and property to the exclusion of all others, including the landlord itself. If the occupier has no right to exclusive possession of the premises then his right to use the premises cannot amount to a lease.

- 6.1.3 As the Council proposals for Community Asset Transfers are normally by way of long leases, the Council will need to consider and take measures as appropriate to mitigate any risks which may be associated with the proposed tenant organisation which include:

- (a) Failure to deliver the project and outcomes;
- (b) Exclude users from the land or cease to operate the facilities on the land;
- (c) Sale of the property to another party;
- (d) Mortgage the property and in the event of default on the mortgage, the mortgagee could take possession and sell the property to another party;
- (e) The tenant organisation could fail financially and become insolvent and any mortgagee could take possession and sell the property;
- (f) Apply to the Upper Lands Tribunal under section 84 of the Law of Property Act 1925 to remove or vary use covenants such as varying the community user provisions to some other non-community use including commercial or residential uses in long leases for a term of 40 years or more after 25 years.

6.1.4 The Council should consider measures to mitigate the risks of leasing the land and property to ensure that there is a balance between what the community organisation reasonably requires as tenant and what the Council requires to ensure that the land and property remains available for the benefit of the community as intended. It is important to consider appropriate lease terms for Community Asset Transfer to mitigate risks including:

- To avoid applications under s. 84 of the Law of Property Act 1925 to remove and vary user covenants such as community user covenants to limit the duration of the lease to be no longer than 39 years and leases in excess of that period should only be considered in exceptional circumstances and be subject to a risk and benefit analysis assessment. The tenants requirements for a longer term lease will need to be balanced at all times with ensuring that the property remains available for the benefit of the community;
- The lease to be 'contracted out' of the Landlord and Tenant Act 1954 which means there is no automatic right to renew the lease;
- Mutual break clauses or Council break clause may be included as appropriate. This will be considered on a case by case basis and the drafting of any break clause may need to address funders concerns for example a break clause cannot be triggered until project life of the funding has expired;
- Underletting of part is usually only permitted with the Council's prior consent, by way of short term leases contracted out of Landlord and Tenant Act 1954. The granting of licences and room hire agreements will be permitted;
- Assignment of part is not permitted. There will usually either be a prohibition on underletting of the whole and permitted assignment only to a successor body. In certain circumstances under letting and assignment of the whole is only permitted with the Council's prior consent;
- A Legal Charge (mortgage) on the property is not permitted without the Council's prior consent to be at the Council's absolute discretion;
- Restriction on title on all leases registrable at the Land Registry to ensure that the Council is aware and consents to any proposed mortgages, assignments or underletting's;
- User provisions will be tightly defined to ensure the property is used for the particular community use it was intended;
- Standard forfeiture provisions to enable to the Council to forfeit the lease for example for non-payment of rent, breach of covenants and insolvency. Forfeiture for insolvency will need considered in each case and may need to be tailored for example providing funders with 'step in' rights to accommodate particular funding requirements.
- Standard lease provisions will include repairing and insuring obligations.

6.1.5 The Council's Community Asset Transfer policy will need to comply with the relevant legislation that relates to the disposal of land or property by the Council

(including but not limited to s.123 of the Local Government Act 1972 and State Aid Regulations).

- 6.1.6 Section .123 (2) of the Local Government Act 1972 – requires the Council to dispose of land at ‘Best Consideration’ that can reasonably be obtained, (other than disposal by way of a short tenancy not exceeding 7 years) and all disposals need to comply with ‘State Aid’ rules (assistance from public resources on a selective basis that can distort competition among organisations engaging in economic activity. Failure to comply with the ‘State Aid’ rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.
- 6.1.7 In determining whether or not to dispose of land for ‘less than Best Consideration’ the Council should also have regard to its accountability and fiduciary duty to local people.
- 6.1.8 In respect of land disposals under s.123 (2) of the Local Government Act 1972 – disposals at less than market value will be considered under the General Disposal Consent (England) 2003 which means that specific consent of the Secretary of State is not required for the disposal of any interest in land which the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area and the difference between the market value and actual price paid for the land is less than £2 million (if the difference is more than £2 million then the disposal will require Secretary of State approval).
- 6.1.9 Other legislation may also be relevant to particular land disposals such as land which has been used as school land in the last 8 years will be subject to the provisions of Schedule 1 of Academies Act 2010 and section 77 of the School Standards and Framework Act 1998 in respect of school playing fields which has been used as such in the last 10 years. Such disposals will require consent of the Secretary of State. Disposals of charity land held by the Council in trust will need to comply with the requirements of the Charities Act 2011.
- 6.1.10 In some circumstances the disposal may have wider implications and may result in the transfer of Council staff to the community organisation under Transfer of Undertaking (Protection of Employment) (TUPE) provisions and will require careful consideration of the implications by the Council and the proposed tenant community organisation.

6.2 Assets of Community Value:

6.2.1 The Community Right to Bid was introduced by Part 5 of Chapter 3 of the Localism Act 2011, which requires the Council to maintain a list of land in its area that is of community value, which list is known as the Council’s List of Assets of Community Value and the Act, and the Assets of Community Value (England) Regulations 2012 establishes the regime for nominating and determining whether land and buildings should be entered onto the Council’s List of Assets of Community Value (ACV).

6.2.2 It is important to note the right to bid provisions **do not**:

- Give anyone right of first refusal of an ACV including community groups.
- Restrict to whom an owner of an ACV can sell their land to or at what price.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

The Community Asset Transfer policy seeks to provide a transparent process for Community Asset Transfers and equalities and diversity considerations are incorporated within the assessment process.

7.2 SUSTAINABILITY IMPLICATIONS

The measures, policies and arising practices set out in this report aim to ensure viable and valuable whole life use and care of assets to support local and District well-being, resilience and prosperity. The Council has a democratic stewardship role not only for each asset but also for the overall portfolio under its direct control and those under its influence. The careful management of changes and impacts arising from disposal, community asset transfer or continued Council ownership are paramount in the future application of these policies upon adoption. The long-term view is to create the conditions, appropriate governance and arrangements to utilise public assets to their maximum potential for community and civic well-being.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

There are no greenhouse gas emissions impacts from the report's recommendations.

7.4 COMMUNITY SAFETY IMPLICATIONS

There are no community safety implications.

7.5 HUMAN RIGHTS ACT

There are no human rights act implications from this report.

7.6 TRADE UNION

There are no trade union implications contained in this report.

7.7 WARD IMPLICATIONS

The report has no specific ward implications, other than to bring Ward Members closer to the Assets of Community Value assessment process.

7.8 IMPLICATIONS FOR CORPORATE PARENTING

There are no implications for corporate parenting.

7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

There are no privacy issues associated with the report's recommendations.

8. NOT FOR PUBLICATION DOCUMENTS

None.

9. OPTIONS

Community Asset Transfer

The options are:

1. To adopt the new Community Asset Transfer policy and process attached to this report.
2. To adopt the new Community Asset Transfer policy and process with amendments.
3. To retain the 2015 Community Asset Transfer policy and process.

Assets of Community Value

The options are:

1. To adopt the new Asset of Community Value approach.
2. To adopt the new Asset of Community Value approach with amendments.
3. To retain the 2012 Asset of Community Value approach.

A new approach is required to ensure that the Council meets its statutory obligations to consider Asset of Community Value nominations within 8 weeks.

10. RECOMMENDATIONS

It is recommended that:

1. The new Community Asset Transfer policy and revised process attached to this report be approved.
2. Authority be provided to the Strategic Director Corporate Resources in consultation with the Director of Finance and City Solicitor to approve disposals (including any disposals at 'less than Best Consideration') under the new Community Asset Transfer policy and revised process.
3. The amendments to the Assets of Community Value process are adopted without amendment.
4. Executive have considered Full Council's proposals and determined:
 - Not to offer an affordable loan product
 - To enhance the toolkit already provided
 - That the Community Infrastructure Levy cannot be used to provide funding towards Community Asset Transfer Projects or consider Community Asset Transfer requests for Community Infrastructure Levy alongside other requests
 - To improve the community's awareness of finance options

11. APPENDICES

Appendix 1 – New Community Asset Transfer policy.

Appendix 2 – New Community Asset Transfer process.

12. BACKGROUND DOCUMENTS

None