

17 March 2011

Community Asset Transfer Strategy

Ward(s) All

Portfolios: Cllr A Andrew - Regeneration
Cllr Z Ali – Communities & Partnerships

Executive Summary:

This report updates the Regeneration Services Scrutiny and Performance Panel on:

- Current Government policy on Community Asset Transfer (CAT)
- The extent of transfer to date in Walsall
- The issues Members need to consider when considering a transfer strategy for Walsall

The information in the report was presented to the Cabinet and CMT meeting on 2 February. Consequently the Asset Management service and Walsall Partnership are working together to:

1. Identify and pilot a number of 'real' opportunities for CAT
2. Use the learning from testing/undertaking CAT to develop a replicable approach
3. Set out a range of criteria for any CAT which deals with the issue in the round (considering property issues, the capacity of the receiving organisation, benefits to the community etc.)
4. Develop a longer term, broader framework for future CAT
5. Identify options for funding or investing in CAT
6. Build a knowledge bank for the Council on best practice elsewhere.

On 22 February the Community Services Scrutiny and Performance Panel received a report on the Big Society. CAT was one of the aspects of the Big Society that the Panel discussed. A copy of that report will be circulated to the Panel prior to its next meeting on 7 April.

Reason for scrutiny:

This report is being brought to the Panel at the request of Cllr Ian Shires, Cllr Sean Coughlan and Cllr Diane Coughlan following discussion on the same subject at previous meetings.

It is anticipated that following consideration of the report the Panel will raise questions and make recommendations that will help to shape the emerging strategy prior to its endorsement by Cabinet.

Recommendations:**That:**

- 1. The Panel considers the information presented concerning Community Asset Transfer and agrees a set of recommendations and actions to be taken*
- 2. The Panel may wish to make recommendations over how the Council will manage particular aspects of the process for example risk management, conflicting demands for assets and issues of affordability*

Background papers:

None

Resource and legal considerations:

The Asset Management service is receiving an increased number of enquiries from groups already occupying Council premises who are interested in pursuing a longer term transfer. The service will also need to be able to resource the workflows arising from the transfer of existing Council services to community management (e.g. transfer of Bentley Leisure Pavilion to Old Hall Peoples Partnership). These demands could require a reprioritisation of resources.

There will be resource implications if assets are transferred at less than best consideration. The report proposes that market values or rents are assessed for all properties and that Business Cases support any rental concession granted or capital receipt foregone.

When properties are transferred by lease the Council may retain some residual Landlord's repairing liability and this will need to be considered in the allocation of maintenance budgets.

Any legal impediments to transfer will be considered on a case by case basis.

Citizen impact:

The impact of CAT will depend on the appetite for it among residents. The Government's vision is that communities will come forward to protect land, buildings and facilities that are important to them.

Environmental impact:

CAT has some potential to impact upon the environment. A transfer could result in the sustainable reuse of a building rather than its demolition.

Performance management:

A consequence of CAT is that the Council's role moves from that of direct provider to enabler. Adequate scrutiny of the emerging strategy can ensure CAT takes place on a fair and equitable basis and that the risks to each party are appropriately managed.

Equality Implications:

Has an Equality Impact Assessment been carried out? ~~Yes~~/No

An Assessment will be completed before the strategy is reported to Cabinet.

Consultation:

No external consultation has been undertaken. However pilot organisations have been identified who the Council will work with to develop forms of asset transfer appropriate to different kinds of community groups.

Internal consultation has been undertaken with Walsall Partnership and the report has its support.

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1. Report

1.0 Government Policy

1.1 The push from Government for the transfer of public sector property assets from local authorities to third sector organisations originated with the publication in May 2007 of “Making Assets Work” the report of the Quirk Review of community management and ownership of public assets. Government agreed with the review team’s three main conclusions:

- i. Assets are used for many different social, community and public purposes. Any sale or transfer of public assets to community ownership and management needs to realise social or community benefits without risking wider public interest concerns and without community purposes becoming overly burdened by operational considerations.
- ii. The benefits of community management and ownership of public assets can outweigh the risks and opportunity costs in appropriate circumstances.
- iii. There are risks but they can be minimised and managed.

1.2 The Localism Bill was introduced on 13 December 2010. This seeks to encourage transfers by introducing a Community Right to Buy scheme providing communities with a time window in which to put together bids to take over important local amenities and buildings. The Department for Communities and Local Government is consulting on the details of the scheme prior to the making of statutory regulations that will govern its implementation. It is proposed that

- Local Authorities will maintain registers of assets of community value. These may be publicly or privately owned and can be nominated by community interest groups.
- A property that has been registered may not be disposed of without the intention to do being notified to the authority and publicised.
- Notification will trigger a fixed period in which community interest groups can come forward and confirm their intention to bid for the property.
- If an expression of interest is made the owner will be prevented from selling the property for a further fixed time period, this is intended to ensure the community interest group have time to put an alternative bid for the property together.

1.3 Crucially, the landowner will still be free to sell to any bidder. There will be no obligation to sell to a community interest group at any time. However public sector organisations disposing of assets of community value are likely to encounter a great deal of adverse publicity if they are perceived to have ignored or not given proper consideration to bids made by community interest groups.

1.4 The Panel will recognise the potential opportunities and threats offered by the Localism Bill, particularly at a time when this Council is considering the closure of a number of its buildings and the cessation of some services. On one hand, transfer to the community may be seen as an opportunity to deliver services

through alternative service means whilst, on the other, there may be strong community support for the retention of an asset that, for financial reasons, the Council would wish to see disposed of. It is, therefore, vital that the Council adopts a clear community asset transfer strategy, in anticipation of future approaches. This strategy shall need to include criteria for differentiating between multiple expressions of interest from groups.

2.0 Community Asset Transfer in Walsall

- 2.1 Walsall MBC has already engaged in a number of different forms of community asset transfer. 86 voluntary and community organisations have an interest¹ in 95 Council owned property assets. They include charity organisations and community associations, sports clubs, clubs for young people and elderly people and uniformed organisations (i.e. scouts).
- 2.2 However these transfers have occurred over a number of years on an adhoc basis in response to individual organisations and local communities' needs. As a consequence apparently similar organisations may find that they occupy Council owned premises on very different terms. These differences can lead to a perception that the Council does not act fairly and transparently in its dealing with the voluntary and community sector. There is a finite amount of property available for transfer. The rationale for its allocation must therefore be explicit and clearly linked to the service objectives of the Council.
- 2.3 The remodelling of services (Working Smarter), away from the Council as direct provider to a service enabler role, and the rationalisation of the portfolio through improved strategic asset management, will lead to more premises becoming available that could have potential for alternative community managed use. The endorsement of a formal policy for community asset transfer is therefore essential to set a clear framework for the consideration of community bids for these premises. It will also bring the allocation of resources in the form of property assets into line with the principles contained in the Walsall Local Compact. Property resources will be allocated in an open and transparent way with common and clear arrangements for agreeing and evaluating the objectives or community benefits that are to be delivered as a result of the occupation of the accommodation. This initiative aligns with the wider review of support for the community and voluntary sectors. The value/cost of property is often overlooked when assessing the level of financial support offered. Councils need to be aware of this hidden subsidy and groups may need to be reminded of these opportunity costs when considering what the Council does for them.

3.0 Proposed Action

- 3.1 Now that an Asset Management team has been established within Property Services there is a resource in place to, amongst many other things, gather the information that is required to support the development and implementation of a community asset transfer policy. Property officers need to make links to organisations like the Walsall Federation of Community Organisations and work

¹ A right to occupy property granted by lease, licence, tenancy agreement or service contract

with them to identify locations where there are property needs. The use of mapping tools with MOSAIC and other demographic data will enable a stakeholder map to be produced that identifies community group assets and targets. This knowledge will be used to inform options appraisals for potentially surplus property assets so that opportunities for transfer are not overlooked or to present a robust case for asset retention, should that be the conclusion.

- 3.2 At present the full opportunity cost to the Council of the transfers already completed is not known. This should be quantified so that Members and the public understand in money terms the amount of support that is currently given to the sector in the form of accommodation. Market values or rents should also be assessed for all properties suggested for future transfer and a formal Business Case made to support any rental concession granted or capital receipt foregone.
- 3.3 Currently there is limited data on the condition and suitability of the assets occupied. Fit for purpose reviews² will enable the degree of risk associated with a current or proposed transfer to be identified. Negotiations between organisations and the Council will proceed on the basis of known facts and each party will be clear about the extent of their future liabilities under the transfer agreement.
- 3.4 A report was presented to Cabinet on 2nd February proposing how relationships with the voluntary and community sector should be better developed. In order to improve the relationship between the council and organisations, it was proposed in previous papers that relationship officers be identified from within directorates. Nine volunteer officers have been identified from the Neighbourhoods, IYPSS, Children's and Adult Social Care and Inclusion Directorates. All officers are at a relatively senior level in the Authority. The relationship officers have come together as a working group to develop and share experience as the prototype project is progressed.
- 3.5 The role of relationship officer has the potential to significantly reduce risk and exposure to voluntary and community sector organisations. There will be some degree of risk in rolling out the approach across the whole Borough as early experience gained from the pilot is that not all organisations will be willing take part due to; previous negative experience with the Authority or current financial and delivery pressures; the lead in time to secure meetings with the organisation may vary dependant upon availability of volunteers or salaried staff. The actions proposed are likely to impact positively in terms of better understanding and reaching traditionally excluded groups through improved arrangements with the voluntary and community sector.

4.0 Affordability

- 4.1 The Council will need to decide how it deals with issues of affordability. There are various options available:
 - A. Best consideration could be sought in all cases. Organisations would then need to rely on their own fund raising to cover acquisition costs

² Fit for purpose reviews will consider the properties location, condition, suitability, operating cost and likely longevity for the proposed use to grade property assets red, amber, green.

- B. The Council could give direct grants to organisations to enable them to meet part or the whole of acquisition costs
- C. Part or the whole of the acquisition costs could be deferred (with or without interest) or even waived
- D. If a lease is granted a rent free period could be negotiated in recognition of fit out and other expenses incurred when occupation commences

Option A is unlikely to appeal to organisations as at present there are no national funding schemes available to support community asset transfer and options for securing private finance are limited.

Option B involves unnecessary administration, the Council giving with one hand and taking back with the other. Difficulties also arise where a tenancy agreement is made for a period beyond that for which funding can be committed.

Option C requires the Council to forego income or capital from the asset transferred. The amount of support given will relate to the Business Case for the transfer and will be justifiable in terms of the community benefits delivered by the project. Some Councils have adopted blanket discounts for qualifying organisations. For example Hillingdon Council gives charities leasing its buildings 80% discount from the market rent assessed for the property. This is in line with the mandatory business rates relief that charities receive. If the organisation can demonstrate that the remaining 20% rent assessed is unaffordable a further discount may be granted by the Cabinet. Blanket discounts have the advantage of applying across the board so no organisation can claim it has been less favourably treated than another. They are also easy to understand. There is a risk that some organisations who could afford to pay more will not be required to and that the Council will lose out on some income. However the saving to the organisation will be reinvested and will contribute to its longer term sustainability.

Option D will be of assistance to less mature organisations, occupying space on relatively short term agreements whilst projects are set up and they demonstrate their capacity to manage assets.

- 4.2 Section 2 of the Local Government Act 2000 empowers local authorities to undertake activities which enhance or contribute to, the economic, social or environmental well-being of that area. Provided this aim is being achieved (as demonstrated in the Business Case for the transfer), the General Disposal Consent (England) Act 2003 permits the disposal (whether by lease or freehold transfer) of land and buildings at less than best consideration³.
- 4.3 It is also open to members of the public to request the Secretary of State to direct a local authority to dispose of land in its ownership that is unused or underused for the provision of services⁴.
- 4.4 In the interest of transparency, decisions about the principle and terms of any community asset transfer should be made by the Council's Cabinet.

³ Section 123 of the Local Government Act 1972 grants local authorities powers to dispose of land and buildings provided they do so at the best consideration reasonably obtainable. The 2003 consent waives this requirement for disposals that secure the improvement or promotion of the economic, social or environmental provided the under-value does not exceed £2 million

⁴ The Public Request to Order Disposal, section 98 Local Government Planning and Land Act 1991

5.0 RICS Best Practice Guidance

- 5.1 Last year the Royal Institution of Chartered Surveyors (RICS) was commissioned by Government to publish revised best practice guidance on the management of local authority assets including the transfer of assets to community ownership and management.
- 5.2 RICS recommend that local authorities set clear criteria by which applications from organisations for transfer of assets will be judged. These might include:
- Strategic impact benefits for example which community strategy objectives are being addressed
 - Economic impact benefits for example jobs created, inward investment created)
 - Environmental impact benefits such as refurbishment to achieve Building Research Establishment Environmental Assessment Method rating
 - Service impact benefits these could include real, cashable, efficiencies from a transfer of services at a local level, notional savings arising from new preventative or outreach work
 - Precise value of any financial discount being sought this might not be the asset's value in its present use, it may be higher reflecting the lost opportunity arising from a change of use or future development value
 - Asset considerations for example revenue savings associated with ongoing rates and utility costs
 - Viability and management for example the nature and skills of the staff, volunteers and management committee, track record of managing similar projects? It should be recognised that certain organisations may require ongoing support with the management of property should they lack the required skills sets.
- 5.2 The last point is key as delivery of the benefits will depend upon the viability of the organisation. An organisation's capacity to manage an asset transfer can be measured by using accepted standards such as the Development Trust Association's "Health Check" or Community Matters' "Visible" standards.
- 5.3 As part of the Business Case for the transfer, the social benefits anticipated from the proposals should be compared against other options for securing the identified objectives; this will ensure that the proposal represents the best option. Periodic reviewing should also take place to ensure that the groups continue to deliver.

6.0 Risk Management

- 6.1 When an asset is transferred there will be risks to the transferring authority and also to the group who will become responsible for the property. The type of tenure negotiated is critical to managing these risks. The degree of control put in place to reduce the residual risk level to a point that is acceptable to both parties will be influenced by the age and condition of the property asset, the capacity of the group to manage it, the strength of the Business Case and the degree of true partnership working (shared vision and values) between the transferring authority and the group.
- 6.2 There are five types of tenure that can be adopted and advantages and disadvantages to each:

Tenure Type	Advantages	Disadvantages
Freehold transfer (the group becomes the full owner of the property asset, the authority has no future legal interest) this could be at market value or less than best consideration	The group acquires absolute security of ownership. This gives it independence from the transferring authority and creates a saleable asset that can be mortgaged to raise funds for the group's activities The group has complete freedom when considering improvements to or redevelopment of the property	The group incurs the expense of purchase and has complete responsibility for ongoing repairs and insurance. It is much harder for the transferring authority to control the future use of the property The property may not attract a purchaser if it is in poor condition or there may be restrictions against disposal in the title deeds The transferring authority loses control of the asset. Although the transfer deed can contain covenants restricting the future use or selling on of the property these can prove ineffective and incapable of enforcement in the long term. For example, if a council (acting in its role as planning authority) grants planning consent for a change of use, it will not then be able (in its role as former owner) to enforce a covenant preventing the use of the property for that purpose
Long leasehold (the group buys a lease of 22 years or more paying a capital premium on completion and a modest annual ground rent thereafter)	The length of the term gives the group security and creates a saleable asset that can be used to secure funding The transferring authority can control the future use by the imposition of covenant in the lease	The group incurs purchase expenses and is responsible for ongoing repairs and insurance The lease may not attract a purchaser if the property is in poor condition or there may be restrictions against disposal in the title deeds
Lease (the group takes a lease for a fixed term of years and pays an annual rent)	The group will normally acquire security of tenure under the Landlord and Tenant Act 1954 (this restricts the grounds on which the transferring authority may object to a renewal of the tenancy when the lease expires) although leases may be	The group incurs the expense of rent and service charges (which will normally be reviewed at regular intervals) The group will have responsibility for repairs and insurance

Tenure Type	Advantages	Disadvantages
	<p>contracted outside of the Act</p> <p>The lease is chargeable and the transferring authority can use this mechanism to prevent unauthorised changes of use or ownership</p> <p>Rents may be subsidised</p> <p>Maintenance responsibilities may be shared between the group and the transferring authority</p>	<p>The length of lease granted may adversely impact upon the groups ability to raise finance for premises improvements</p> <p>The current condition of an asset and uncertainty of funding for repair and improvement can be an obstacle to agreeing lease terms</p>
Tenancy (a verbal or written open ended agreement that may confer security of tenure)	May allow a new group an opportunity to demonstrate their capability and give it time to make a case for occupying the premises on an more secure basis	<p>Tenancy may be terminated on short notice</p> <p>Fundraising is difficult as future of the group is uncertain</p>
Licence to occupy, Tenancy at will (lesser forms of occupancy agreement that are unlikely to confer security of tenure)	Easy for the group (or the Council) to terminate if project does not succeed	<p>Use of premises (opening hours etc.) may be restricted</p> <p>Risk to transferring authority that group may acquire security of tenure if basis of occupancy is unclear</p>

- 6.3 Where an organisation has secured significant external funding for a new build or refurbishment the grant of a long lease (>22 years) is most likely to strike the correct balance of freedom and control between the parties. In other circumstances, for example premises held in advance of a proposed development, a short term tenancy will be appropriate.

7.0 EU Rules

- 7.1 Arrangements for asset transfer must take account of EU state aid rules. An assessment should be made in each case. There is a *de minimis* provision (currently €200,000 in any rolling three year period) and normal contracts awarded under EU procurement rules are not aid. Support is permitted in respect of:

- I. Culture, employment, environmental protection, research and development, regional development, undertakings in deprived urban areas, aid to small and medium enterprises: and
- II. Provision of social housing, improvements to physical environment and brownfield sites

- 7.2 EU state aid provisions do not apply where it can be demonstrated that the service to be provided is truly local and not part of a market in which private enterprise operates.

8.0 Conclusion

- 8.1 The Localism Bill will now progress through parliament and during this period there is an opportunity for Walsall MBC to consider how it will respond to the policy agenda. It is vital that a formal community asset transfer policy endorsed by Cabinet is put into practice before the bill becomes law.
- 8.2 The adoption of a policy will further demonstrate that Walsall MBC manages property strategically, practices good asset management planning and challenges asset performance and use. It will set out a framework for the use of Council property assets to strengthen and empower communities and work effectively with local community groups:
- bringing people together
 - enhancing the local environment
 - delivering more responsive community services
 - giving residents a bigger stake