

Cabinet – 7 February 2024

Investment and Leasing Proposals for Council Owned Community Buildings

Portfolio: Councillor Andrew – Deputy Leader & Regeneration

Related portfolios: Councillor Perry – Deputy Leader & Resilient Communities

Service: Corporate Landlord

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

- 1.1 To support the continued delivery of services by the voluntary and community sector, enabled and supported through the signing of lease agreements and the underwriting of capital investment gaps for those occupying council owned properties.

2. Summary

- 2.1 This report sets out the progress being made through the Corporate Landlord and Resilient Communities teams, working together with voluntary and community sector organisations. This includes regularising the ongoing occupation of council owned buildings by agreeing terms and implementing formal leases.
- 2.2 This will be complimented by the design and implementation of circular funding arrangements whereby the council will receive lease payments from occupants and utilise these payments to create and administer a grant funding programme to enable these organisations to pay for the rent. This, where agreed, enables revenue payments to be made to occupants who have a formal lease in place with the council, to support the delivery of tailored advice, guidance and services for their local communities.
- 2.3 The council has for some years also successfully delivered initiatives that secure and offer capital grants to locally based community groups, to improve or expand the facilities and provision available to support local communities. This often includes a mix of council and non-council support, secured through bids submitted and subsequently approved. The mix and selection of the most appropriate external funder is dependent upon the services and the outcomes

proposed, with local community groups supported in their bidding processes by the council's External Funding Team. One such external fund is the Community Capital grants programme, which is part of both Walsall and Bloxwich's Town Deal.

- 2.4 The Community Capital programme includes bids from community-based groups that occupy council owned properties, where any resultant agreed capital investments will directly benefit / improve council properties. It is therefore proposed that where a successful Community Capital project has a funding gap and is for improvements to properties owned by Walsall Council, the council will underwrite the funding gap to allow the construction work proposals to continue, whilst additional external funding is secured. If the external funding bids are unsuccessful the council would fund this gap but consider it as an investment into its properties and the communities it serves. Successful projects will be those that have followed the governance process that is set out in the Community Capital programme business case signed off by the council's Section 151 officer and has successfully completed the required due diligence process.

3. Recommendations

- 3.1 That Cabinet approves the principles for the provision of circular grant funding to community organisations linked to the grant of formal leases of council-owned properties.
- 3.2 That Cabinet delegates authority for the approval of circular funding grants with a value of over £500,000 to the Executive Director of Economy, Environment and Communities in consultation with the Deputy Leader and Portfolio Holder for Regeneration where the criteria set out in this report are met.
- 3.3 That Cabinet approves the underwriting of identified funding gaps associated with successful Community Capital supported projects for council owned and leased buildings, to enable the works to proceed, and delegates authority for the approval of individual project underwriting to the Executive Director of Economy, Environment and Communities in consultation with the Deputy Leader and Portfolio Holder for Regeneration, where the criteria set out in paragraph 4.33 of this report are met.
- 3.4 That Cabinet notes that the approval of circular funding and capital gap funding grants with a value of under £500,000 will be in accordance with existing officer delegations contained within the council's constitution.

4. Report detail – know

Context

- 4.1 Walsall in 2040 will be the most improved borough in the region, a vibrant place where people are proud to live and residents in all neighbourhoods have the same life chances.
- 4.2 As part of our planning towards 2040 the council is working with partners within the voluntary and community sector to help to deliver improvements for the residents of the borough through strengthened community cohesion and the delivery of essential services through the VCS.
- 4.3 Voluntary and community organisations occupy over 50 council-owned properties from which they deliver much-needed services to their communities. Whilst some community organisations occupy their buildings under formal lease agreements there are a significant number which have historic but informal arrangements, often arising following the closure of operational council buildings.
- 4.4 The informal nature of these arrangements presents a number of challenges both to the council as property owner and the occupying organisation, including uncertainty relating to:
- responsibility for statutory compliance testing and remedial works
 - responsibility for repair and maintenance
 - responsibility for payment of property occupational costs
 - security of tenure for the occupier
 - access to external funding opportunities
- 4.5 These areas of uncertainty increase the risk that essential works are either not undertaken or duplicated.
- 4.6 Furthermore, many community organisations rely on external grant funding to support their activities. Whilst the criteria for qualification for grant funding varies, many funders require applicants to either own their premises, or have a formal lease, and have requirements for the minimum unexpired term of the lease. Where organisations occupy council buildings without formal leases, their ability to attract and secure external grant funding can be lost.
- 4.7 The Walsall Council Strategic Asset Plan 2022-27 confirms the council's commitment:
- to use our assets to form long-term partnerships with suitable community organisations to create stronger, more cohesive and more sustainable communities; and
 - to formalise agreements with community organisations which occupy council buildings on an informal basis, for the benefit of both the council and the occupying community organisation.
- 4.8 Corporate Landlord and Resilient Communities have been working with voluntary and community sector organisations to regularise the ongoing occupation of these buildings by agreeing terms for formal leases. The aim of this exercise is to remove the uncertainty and potential risks outlined above and to open up opportunities for organisations to use the certainty of a formal lease

to secure revenue and capital funding to support their essential work in the community.

- 4.9 The terms of the leases will vary dependent upon individual circumstances, including the age and size of the property, potential levels of repairing liabilities and specific funders' requirements. Generally speaking, the longest lease term required by a funder for capital funding is 25 years, however, not all organisations wish to seek capital funding, and requirements for revenue funding tend to allow for shorter lease terms. It is important to note that it is not the intention to increase the financial burden on the organisation, whilst noting that any repairing obligations that the council takes on represents a long-term commitment to retain ownership of the property and to fulfil those obligations for the full term of the lease.
- 4.10 The aim to grant long term leases to community organisations has implications for the council in terms of Best Consideration. Section 123(2) of the Local Government Act 1972 states that "Except with the consent of the Secretary of State, a council shall not dispose of land under this section... for a consideration less than the best that can be reasonably be obtained". The requirement to achieve best consideration applies to all disposals other than by a short tenancy of less than 7 years.
- 4.11 Whilst there is no set process to follow, this duty to achieve best consideration normally leads to land/property being marketed and disposed by the council via private tender or auction, as these disposal routes enable the council to demonstrate that the receipt achieved is best consideration through exposure of the land to the open market. Local Authorities are not however obliged to advertise land for disposal and it is possible to deal with one named purchaser; provided that it follows a robust process and has clear evidence that the consideration for which the land is disposed is the best that can reasonably be obtained.
- 4.12 The Disposals, Acquisitions and Investment Policy, contained within the Walsall Council Strategic Asset Plan 2022-27 defines circumstances where a sale (disposal) to a named party can be considered and where it is appropriate to consider excluding the market from a disposal process. Where circumstances allow the council to consider a disposal to a named party, the disposal must be conducted on terms that reflect best consideration.
- 4.13 The grant of a lease for a term exceeding 7 years to a community organisation which is already in occupation of a building would constitute a disposal to a named party and, as such must be undertaken at a market rent.
- 4.14 In order to achieve the aim of supporting community organisations through the use of the council's property portfolio and not imposing the financial burden of the payment of a market rent on the organisations it is proposed that in specific circumstances, a grant will be provided to the community organisation to enable it to recover the rent payable under the lease.

- 4.15 The grant agreement will run for the term of the lease and the payment of the grant will only be triggered when the quarterly rent due under the term of the lease is received by the council. This avoids a situation of grant funding being provided where the associated rent payments have not been made. The grant agreement will mirror any rent review provisions contained in the lease to ensure that the amount of the grant does fully reimburse the rent payable.
- 4.16 The grant agreement will include a requirement for the recipient of the grant to submit an annual return to identify progress and achievements against identified outcomes in terms of service delivery within the community. The grant agreement will contain a process to seek remedies from the recipient in cases of a failure to deliver against the pre-agreed and tailored outcomes.
- 4.17 Under the constitution, the value of a grant is calculated as being the total of the payments to be made to the organisation over the term of the grant agreement. The majority of cases are expected to have a total value under the £500,000 threshold for Cabinet approval. In these cases, approvals will be sought through the existing scheme of officer delegations. There will, however, be some cases where the total value of the grant will exceed £500,000 which will require Cabinet approval. Accordingly, this report is seeking a delegation for the approval of grants with a value of over £500,000 to the Executive Director for Resources and Transformation in consultation with the Portfolio Holder for Regeneration where the qualifying criteria set out in this report are met.
- 4.18 The actual cost of the circular funding approach will be limited to the cost of processing the grant payments to the recipients, as the rental funds received from the tenant will be used to fund the grant payment back to the tenant.

Qualifying criteria

- 4.19 The council will have discretion to offer circular funding, however, it will only apply in the grant of leases to registered charities, community interest companies, community interest organisations and constituted groups which have been properly incorporated for at least three years and where:
- Leases of council-owned properties are negotiated with a qualifying named party in order to regularise the existing informal occupation of a building, or
 - The council is negotiating a lease of a building with a qualifying organisation for the delivery of specific services in the community.
- 4.20 Circular funding will not apply in the following cases:
- Open market disposals of properties.
 - Where a formal lease exists.

Subsidy Control

- 4.21 The treatment of financial assistance by public authorities is defined in the Subsidy Control Act 2022 (the Act). Financial assistance will be considered to

be a subsidy where it satisfies all four of the following limbs of the test contained in the Act:

Limb A:

- 4.22 The financial assistance is given, directly or indirectly, from public resources by a public authority. Public authorities include any entity which exercises functions of a public nature. Public resources include public funds that are administered by the UK Government, the devolved governments, or local authorities, whether they are given directly, through other public bodies (e.g., agencies), or through private bodies.

Limb B:

- 4.23 The financial assistance confers an economic advantage on one or more enterprises. This limb has two components. Firstly, the recipient of the assistance must be an enterprise: any entity (that is, any person, or groups of persons under common control) that is engaged in an economic activity, which means offering goods and services on a market. If the recipient is engaged in both economic and non-economic activity, it should be considered an enterprise only in relation to its economic activity.

Limb C:

- 4.24 The financial assistance is specific, such that it benefits one or more enterprises over one or more enterprises with respect to the production of goods or provision of services. This definition covers financial assistance that is provided directly or indirectly to specific beneficiaries determined on a discretionary basis by the public authority, as well as assistance that benefits (directly or indirectly) only enterprises in a particular sector, industry, or area, or with certain characteristics.

Limb D:

- 4.25 The financial assistance has, or is capable of having, an effect on competition or investment within the UK, or on trade or investment between the UK and another country or territory, or both. Financial assistance envisaged by public authorities must be capable of producing a relevant effect, such that it is capable of having a genuine, adverse effect that is more than incidental or hypothetical on competition or investment in the UK, or international trade or investment, in order to constitute a subsidy.
- 4.26 Based on the test set out above, the financial assistance proposed in the form of circular funding to community organisations does not constitute a subsidy as the assistance does not satisfy limbs B and D. However, this will need to be assessed on a case-by-case basis and in cases where subsidy aid could apply, further due diligence will be undertaken before the approval of a grant agreement.

Community Capital programme and funding gap underwriting

- 4.27 The council delivers services (External Funding Team) and initiatives (Crowd Funding) that continues to attract external revenue and capital funding into the

borough. This directly supports local community and voluntary sector organisations in the delivery of services that benefit local people. The council has secured Government capital funding through the Towns Fund programme (£42.6million) to deliver a range of projects within both Walsall and Bloxwich eligible areas.

- 4.28 One of these projects is the council's Community Capital Programme, which has an award of £2.498m for Bloxwich and £741k for Walsall available to provide grants to applicants. The programme aims to support local eligible community and voluntary sector organisations to deliver additional support, guidance and training services for local people, so they are able to become more economically active. The capital funding available can support improvements / extensions to premises, including new facilities, training rooms, access arrangements, etc. Access to these funds is through a range of open calls, allowing bids to be considered, assessed and approved by the Town Deal Board and the council.
- 4.29 We have received and expect to continue to receive applications from groups who occupy council owned properties, administered through the Corporate Landlord Service. If successful this triggers capital investment and improvements to these buildings, enhancing the levels of services provided and completing improvements to council owned buildings.
- 4.30 One of the conditions that applicants must fulfil prior to the release of grant funding is signing a lease or an intention to enter into a lease agreement with Walsall Council. As mentioned previously, this is also an expectation / requirement of many external funding bodies, to protect the integrity of and the future delivery of local services that they have or will continue to support.
- 4.31 Once applications are approved, the External Funding Team works with applicants to seek out and apply for additional external funding, complementing the Community Capital grants awarded, so that:
- (a) those projects that still have a funding gap after accounting for the Town Deal grant can identify and bid for external funds to ensure that the project is fully funded; or
 - (b) for fully funded bids, further external funding can be sought to reduce the call on Town Deal grant so that it can spread further and support even more communities and projects.
- 4.32 For those projects under (a) above where there is an identified funding gap, this can result in delaying the start of the project / improvement works as the council will not be able to offer a grant until the full funding package is secured. Delays could also place the Town Deal Funding at risk, as current guidance requires this to be fully spent before the 31.03.2026.
- 4.33 It is proposed that for successful Community Capital projects that have a funding gap and are for improvements to properties owned by Walsall Council, the council underwrites the funding gaps to allow the construction works proposals to continue, whilst additional external funding is secured. Successful projects will be those that have followed the governance process that is set out

in the Community Capital programme business case signed off by the council's Section 151 officer and has successfully completed the required due diligence process. If the external funding bids are unsuccessful the council would fund the gap and consider it as an investment into its properties and the communities they serve. If the underwriting is called upon and issued as a grant (or a capital budget if the council decided to complete the works directly rather than award a grant to an applicant), all necessary due diligence (including ensuring that the grant was subsidy aid compliant) would be completed by the council's Accountable Body team in line with the existing Town Deal process.

Council Plan priorities

4.34 As set out in Our Council Plan 2022-2025, the council's vision is to ensure that 'Inequalities are reduced and all potential is maximised. Together we are committed to developing a healthier, cleaner and safer Walsall and creating an environment that provides opportunities for all residents, communities and businesses to fulfil their potential and thrive.' This will be achieved by focusing on five key priorities. The ability to grant long term leases to community organisations without impacting on their cost base will support the sector and enable organisations to seek external funding to support their activities. Accordingly, the proposed circular funding principles will contribute towards the delivery of the following council areas of focus and outcomes:

- Focus: Enable greater local opportunities for all people, communities and businesses.
- Outcome: Supporting a dynamic, resilient and diverse economy where businesses invest and everyone has the right jobs and the right housing in the right place
- Focus: Encourage our residents to lead active, fulfilling and independent lives to maintain or improve their health and wellbeing.
- Outcome: People can access support in their community to keep safe and well and remain independent at home

Risk management

4.35 Circular Funding: There is a risk that the tenant will not pay the rent due under the terms of the lease. In this event, the grant would not be payable, as the community organisation can only claim the grant payment when the rent has been paid to the council.

4.36 Funding gap underwriting: There is a risk that without the council underwriting the Community Capital programme, in terms of any agreed funding gaps, the council risks significant slippage of the Town deal funded element of this programme beyond its funding end date of March 2026. This could mean loss of external grant and miss the chance to utilise the available Towns Fund monies to improve its assets and enhance the services provided locally.

4.37 There is also a risk that external funding will not be identified to cover the funding gap of council owned Community Capital projects, in which case the gap will need to be funded by the council.

Financial implications

Circular Funding

- 4.38 The circular funding approach enables qualifying community organisations to recover the cost of the rent payable under the terms of the lease. The rent will be payable by the community organisation and then the grant, to the equal value of the rent paid will be claimed and paid to the community organisation. This means that the net rent receivable for each building under this arrangement would be nil, however, this is currently the case where no formal lease agreement exists and so there are no net implications for the council's Medium Term Financial Plan.
- 4.39 There will be a small internal cost to the council for processing the grant payments to the community organisations, however, it is expected that this process can be automated to minimise this cost and to shorten the time between the payment of the rent and the payment of the grant. These can be managed utilising existing resources.

Funding gap underwriting

- 4.40 There is a risk that for those Community Capital projects submitted that still identify a funding gap, if external funding cannot be secured the council will be unable to issue grant offers to Community Organisation applicants as there would be no certainty that full scheme costs could be met. To avoid delays and risk loss of Town Deal Funding, it is proposed that the council will underwrite funding gaps to pay for improvements to its own properties.
- 4.41 If delegations are utilised then subsequently external funding cannot be identified to cover the funding gap of council owned Community Capital projects, the funding gap will be funded from the council's existing resources. It is proposed that the Development Pipeline budget be utilised to fund such grants and use of this will be reported through the periodic corporate financial reporting to Cabinet. To call from the Development Pipeline budget, Community Capital applications will need to be presented to the council's Strategic Investment Board for approval.
- 4.42 This funding will convert into an investment in its portfolio of community facilities and will generate outcomes that benefit its residents, demonstrating value for money, set out through the application and assessment process administered by the council's Programme Management Service area.

Legal implications

- 4.43 Section 123(2) of the Local Government Act 1972 states that "Except with the consent of the Secretary of State, a council shall not dispose of land under this section... for a consideration less than the best that can be reasonably be obtained". The requirement to achieve best consideration applies to all disposals other than by a short tenancy of less than 7 years.

- 4.44 Whilst there is no set process to follow, this duty to achieve best consideration normally leads to land/property being marketed and disposed by the council via private tender or auction, as these disposal routes enable the council to demonstrate that the receipt achieved is best consideration through exposure of the land to the open market. Local Authorities are not however obliged to advertise land for disposal and it is possible to deal with one named purchaser; provided that it follows a robust process and has clear evidence that the consideration for which the land is disposed is the best that can reasonably be obtained.
- 4.45 The Disposals, Acquisitions and Investment Policy, contained within the Walsall Council Strategic Asset Plan 2022-27 defines circumstances where a sale (disposal) to a named party can be considered and where it is appropriate to consider excluding the market from a disposal process. Where circumstances allow the council to consider a disposal to a named party, the disposal must be conducted on terms that reflect best consideration.
- 4.46 The grant of a lease for a term exceeding 7 years to a community organisation which is already in occupation of a building would constitute a disposal to a named party and, as such must be undertaken at a market rent.

Procurement Implications/Social Value

- 4.47 There are no procurement implications to this report although there is clear recognition that, if approved, the circular funding principle will support the delivery of increased social capital within the borough.

Property implications

- 4.48 A number of community organisations currently occupy council-owned properties on an informal basis. This position has the potential to create uncertainty in terms of the respective responsibilities between the council as building owner and the community organisation as occupier which could have potentially serious consequences. Furthermore, in the absence of a lease, the community organisation has no security of tenure for the property.
- 4.49 As detailed in this report, many sources of external funding require applicants to hold long term leases of their properties as a condition of the provision of funding. The ability to grant long term leases to community organisations at best consideration without negatively impacting on their financial position enables them to qualify for external grant funding.

Health and wellbeing implications

- 4.50 The proposed circular funding principles will support the voluntary and community sector in its delivery of essential services to residents in their communities.

Reducing Inequalities

- 4.51 The VCS provides access to essential services and support to all members of the community.

Staffing implications

- 4.52 There are no direct staffing implications associated with this report.

Climate Impact

- 4.53 There are no additional climate change issues arising from this report.

Consultation

- 4.54 Consultation in respect of this report has been undertaken with the Deputy Leaders of the council, Resilient Communities, Finance and Legal Services

5. Decide

- 5.1 The council has made a commitment to support community organisations through the use of its property portfolio and to regularise the occupation of such buildings by community organisations. Accordingly its choices are:
- a) Preferred approach – approve the circular funding model for community organisations which will enable the council to enter into long term leases with community organisations to provide security and stability without having to impose additional cost on the organisations.
 - b) Do nothing – not approve the circular funding model which will prevent the council from entering into long term leases with community organisations without imposing an increase of costs on the organisations.
 - c) Preferred approach - approve the underwriting of appropriate gaps in funding required to improve council owned buildings as part of the Community Capital programme. Allowing the building work to proceed and enabling delivery of the resultant community benefits from council owned buildings.
 - d) Do nothing – not approve the underwriting of gaps to Community Capital grants available for council owned buildings, resulting in the potential loss of funding that will benefit council assets and local communities.

6. Respond

- 6.1 If approved, Corporate Landlord and Resilient Communities will work together with the VCS to agree new leases of council owned properties and will align grant agreements with the new lease documentation and will seek the appropriate delegations.
- 6.2 If approved, the Programme Management service area will set into place the required processes to ensure that the appropriate funding is underwritten and if required utilised to improve council owned buildings and to ensure the delivery of outcomes that demonstrate value for money.
- 7. **Review**
- 7.1 Corporate Landlord and Resilient Communities will monitor the new circular funding arrangements to ensure that they achieve the intended aims.

Appendices

Background papers

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Signed



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7 February 2024

Signed



Councillor Andrew
Deputy Leader and Portfolio Holder for Regeneration

7 February 2024