

Cabinet – 20 March 2019

Response to Economy and Environment Overview and Scrutiny Committee Recommendations– Granting of a Lease for the Recreational Centre on Hall Street, Darlaston

Portfolio: Councillor Adrian Andrew (Deputy Leader) - Regeneration

Related portfolios: Councillor Gary Perry- Community, Leisure and Culture

Service: Regeneration and Development

Wards: Darlaston South

Key decision: No

Forward plan: No

1. Summary

1.1 At its meeting 20 March 2019 Cabinet resolved to:

“Approves the granting of a lease to FC Darlaston of the recreational centre on Hall Street, Darlaston, as shown edged in black on plan reference EMPS 4287 and delegates authority to Executive Director for Economy and Environment, in consultation with the Portfolio Holder Regeneration, to agree the detail of the final transaction and enter into any contracts, deeds or warranties deemed necessary for the leasing of the property.”

1.2 The decision was made in view of the offers received for the leasing of the property meeting the Council’s requirements to achieve Best Consideration as per section 123(2) of the Local Government Act 1972 where case law has established that in assessing what is ‘best consideration’, a local authority can only take into account those matters which have a commercial or monetary value. Generally non-commercial considerations cannot be taken into account apart from where the Council seeks to rely upon the Secretary of State’s General Consent to Disposal of land at an under value, where in the Councils opinion, the transfer will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area.

1.3 Subsequent to the decision of Cabinet, a Call-In was requested on the grounds that the decision to award a lease of the Darlaston Recreation Ground should have more weight given to *the “intensity of use of the facility rather than just monetary values”* and *“closer examination for the wider community interest”*.

1.4 The Economy and Environment Overview and Scrutiny Committee (OSC) then debated the matter at a meeting on 11 April 2019 and resolved the following;

“That, following a review of the process taken to issue the lease on Darlaston Recreational Centre on Hall Street, Darlaston, the Committee note the process to use best consideration but encourage the Cabinet to consider rerunning the disposal process using the Community Asset Transfer Policy.”

The matter is therefore returning to Cabinet for consideration and the detail set out in this report seeks to provide Cabinet with information relating to the possible implications of pursuing the leasehold disposal of the Darlaston Recreation Ground through a Community Asset Transfer (CAT). It serves to remind Cabinet of their decision to adopt a CAT policy in September 2018 and the implications of implementing this policy in the context of this specific property to allow Cabinet to consider the recommendations of the Economy and Environment OSC in the round.

2. Recommendations

- 2.1 That Cabinet note and accept the recommendations of the Economy and Environment Overview and Scrutiny Committee.
- 2.2 That Cabinet approve the use of a Community Asset Transfer (CAT) as a means of disposing a potential leasehold for the Recreation Centre, Hall Street, Darlaston; subject to the outcomes of the CAT Policy evaluation process.
- 2.3 That Cabinet note that a further report will be brought back to Cabinet on the outcome of the CAT evaluation process.

3. Report detail

- 3.1 At its meeting 5 September 2018 Cabinet resolved to adopt a Community Asset Transfer Policy. Community Asset Transfer (CAT) is increasingly seen as a means of achieving a range of key objectives from promoting civic renewal, community cohesion, and active citizenship to improve the social, economic and environmental wellbeing of our communities. In 2007 the Quirk Review (‘Making Assets Work: The Quirk Review of community management and ownership of public assets’) signalled the transfer of public assets to community based organisations as a mainstream activity. The adoption of a CAT Policy has put in place a formal process setting out the arrangements for how the Council intends to deal with surplus property that may be disposed to Voluntary and Third Sector (VCS) organisations in a transparent and formal arrangement.
- 3.2 The Cabinet report set out the CAT Policy and provided a process for determining whether an asset is surplus to the Council’s requirement and whether it can be considered for a CAT. The decision to declare a surplus property available for a CAT follows the decision making processes outline in the Corporate Asset Management Plan 2014-19 and the Council’s Constitution which sets out the delegations afforded to officers and Members via Cabinet, as appropriate, to approve property transactions. When the Council decides to declare an asset surplus and available under a CAT it will make this publically known and will maintain a record of all possible CATs. The CAT Policy explains the decision making considerations (the CAT criteria) and stages that will be followed to consider such matters. For each CAT a weighting will need to be given to

determine the level of social value placed on proposals/ bids/ business cases set against the monetary value from rental income, and this weighting will be determined by the Council's Corporate Asset Management Plan governance and the Constitution.

- 3.3 To date no properties surplus to the Council's requirements have been made available under the CAT Policy, and should Cabinet resolve to adopt the recommendations of the OSC then the declaration that Darlaston Recreation Centre will be made available under a CAT will make it the first asset to be disposed of in this way. Whilst in the Policy there is timeline indicating a process for decision making of circa 12 months from the point of marketing the CAT, Cabinet are advised that this timeline is based upon an ideal and best case scenario that has not been fully tested to date. A test case has been undertaken with the VCS and One Walsall to allow the Council to make adaptations to its outlined process and at present 'lessons learnt' are being reviewed with amendments to the Policy forthcoming. Cabinet are therefore asked to note the infancy of the implementation of the CAT Policy with regards to considering Darlaston Recreation Centre as a CAT.

4. Council Corporate Plan priorities

- 4.1 As set out the Cabinet Report dated 5 September 2018, the implementation of the CAT Policy has direct links with a number of Council policies and plans including;

- Walsall Council Corporate Plan 2018 – 2021;
- The Walsall Plan: Our Health and Wellbeing Strategy 2017 - 2020
- Local Development Framework;
- Walsall Partnership's Locality Model;
- Cohesion and Integration Strategy 2017 – 2020

The successful implementation of a CAT for Darlaston Recreation Centre will require the VCS to meet one or more of the Council's Corporate Priorities:-

- Economic Growth; for all people, communities and businesses
- People; have increased independence, improved health and can positively contribute to their communities
- Children; have the best possible start and are safe from harm, happy, healthy and learning well
- Communities; are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.
- Internal Focus; all Council services are efficient and effective.

- 4.2 A successful CAT will support the Council to deliver the objectives of the Corporate Plan and meet the Council's purpose. In this case, a CAT for Darlaston Recreation Ground will need to provide a tool for the VCS to support our communities to prosper and become more resilient, and support community services to be delivered in local buildings that can help develop a stronger sense of belonging and cohesion.

4.3 The Council has already developed a Social Value Policy which lists the themes, outcomes and measures (TOM's) that will be used to maximise social value benefits for people and communities in Walsall. Social Return on Investment (SROI) is a way of *measuring* the broader social, economic and environmental value generated by an organisation. This means that every successful application for a CAT will have bespoke formulas to calculate the SROI. With that in mind, the Council has a number of options available to calculate SROI:-

- Option 1 – there are several free 'value calculators' available online, for example Housing Associations' Charitable Trust (HACT). These calculators are already set up with generic formulas so that data is uploaded and the calculation is automated. This option will provide the Council with a good measurement of SROI but will not be comprehensive.
- Option 2 – there are organisations that provide a bespoke service, for example The Social Value Portal, Bright Ideas Consulting Ltd. These are chargeable services and costs vary depending upon the amount of data to analyse and whether the Council wishes to subscribe annually (i.e. annual subscription costs £12K p.a.)

Bearing in mind that the West Midlands Combined Authority (CA) is leading on SROI and there is a Black Country taskforce working on this matter it is recommended that Option 1 is to be utilised until a regional solution is identified. This could mean that the infancy of the CAT policy when applied to Darlaston Recreation Ground may derive outcomes which are not as comprehensive as the Council may wish them to be but it will enable those broader socio-economic considerations being sought by the Economy and Environment OCS to be considered with greater weight been given to this than the monetary value of the property.

5. Risk management

5.1 A detailed risk analysis was undertaken at the time of preparing the CAT Policy and was reported in the 5 September 2018 Cabinet Report. The report highlighted the following risks of a CAT;

- Managing the expectations of the community, stakeholders and Elected Members as to how and when the Council disposes of its property interests- having a transparent and adopted CAT Policy will help to overcome this by setting out the evaluation criteria and decision making process involved so all who participate understand the parameters in which the Policy will operate.
- The capacity of the VCS to engage and delivery the CAT Policy objectives may still prove challenging even with the CAT Policy in place and the success of the Policy may rest in the strength of the VCS to respond to the evaluation process and the future occupational/ lease obligations that will be placed upon them to ensure the Council achieves its wider Social Return on Investment.

- The implementation of any CAT will require the Council's resources to implement the Policy; There may be periods where the capacity, resources and skills to administer and implement the CAT are constrained by the work programme or competing priorities. Also, consideration to the suitability of a surplus property to be made available as a CAT will be needed as part of the initial stages as often such surplus properties may be of inadequate or poor quality. Some may require investment prior to being suitable for leasing to a community organisation. Some initial funding may be needed for the Council to undertake a building condition survey to inform its decision to dispose and what level of property maintenance responsibilities are able to be passed to a future occupier through the terms of a lease agreement.

5.2 Therefore in the context of the previous risks presented to Cabinet brought about by the adoption of the CAT Policy, the risks associated with the proposals to make Darlaston Recreation Centre available through a CAT are likely to apply, and specifically the following are potential risks;

- The timelines associated with the implementation of the CAT as set out in paragraph 3.3 and the property and financial implications associated with the ongoing management liabilities of the Centre set out in paragraph 6.3.
- The reputational risks that those parties who participated in the first marketing process feel aggrieved that their proposals are not be taken forward in the way the Council's marketing material had set out, and whilst those same parties will have an opportunity to participate in the CAT process, this may not derive the same outcomes.

6. Financial implications

6.1 It is anticipated that the administration of a CAT can be met within existing resources however if the proposed CAT for Darlaston Recreation Centre is resolved to be taken forward then the costs of administering this will be noted to better inform the consideration of future CAT disposals.

6.2 In adopting the CAT Policy Cabinet have already accepted the position that a CAT may see the loss of capital receipts or below market value rental income. Such financial implications are an important factor in the decision to declare a surplus asset available for a CAT.

6.3 As set out in the Cabinet Report dated 20 March 2019, the decision to transact the property in the open market has been done in part to reduce the Council's obligations for the management and maintenance of the property. The full operating costs of the Recreation Centre for the year 2017/18 were £28,095. For the year 2018/19 these final outturn operating costs were not known at the time of the 20 March 2019 Cabinet meeting however subsequently further analysis of these costs are estimated to be £86,000 per annum (gross). As set out at paragraph 3.3 a timeline for implementing a CAT for Darlaston Recreation Centre could be up to 12 months from the date of marketing and in the intervening period the Council may choose to continue to operate the facility at the same 2018/19 operating costs with any income generated from continued hiring of the facility

used to offset these costs. At present the Darlaston Recreation Centre provides community activities and makes available for the hire the on-site facilities. In due course, and subject to greater certainty over the CAT timelines, a view needs to be taken as to the Centre's ability to enter into hiring arrangements beyond the current operational deadlines (May 2019) and subject to Cabinet's resolutions it will be necessary to decide through engagement with the relevant portfolio holders how the asset is best managed in any intervening period.

7. Legal implications

7.1 Under section 123(1) of the Local Government Act 1972 (LGA 1972), Councils have a fairly wide discretion to dispose of their assets in any manner it wishes. This includes selling freehold interests, granting or assigning leases and granting easements. However, this general power is limited by the duty in LGA 1972, s123(2) to achieve the best consideration reasonably obtainable when disposing of land, unless:

1. The 2003 General Disposal Consent for disposal at less than best consideration applies; or
2. Secretary of State for the Department of Communities and Local Government has given his consent to the disposal;

A disposal by way of a short tenancy (defined as the granting of a term not exceeding seven years or the assignment of a term which has at the date of the assignment not more than seven years left to run) is not caught by the duty to achieve best consideration. The General Disposal Consent (England) 2003 permits Councils to transfer land below market value, without the need to seek specific permission from the Secretary of State, provided that:

- in the Councils opinion, the transfer will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area, and
- the difference between the land's market value and the actual price paid for the disposal (if any) (i.e. the undervalue) does not exceed £2,000,000

7.2 It is anticipated in the case of the Darlaston Recreation Centre that making the property available as a CAT and weighting social value equally or higher than a consideration of monetary value will lead to bids/ businesses case where the rental value offered for the property is less than market value. In this specific case market value has already arguably been tested by the bids received for the lease and as set out to Cabinet 20 March 2019. Therefore it is anticipated that bids will result in an under value of the market value and will require the Cabinet to consider a disposal at less than best consideration- under the criteria set out in paragraph 2.3- and this will be a decision of a later Cabinet, and ahead of final agreement to enter into a lease with a selected VCS organisation.

7.3 Leases in excess of 3 years are required to be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document, or where contracts are exchanged, in each in accordance with s2 of the Law of Property (miscellaneous provisions) Act 1989.

8. Procurement implications/Social Value

- 8.1 There are no direct procurement implications arising from this report.
- 8.2 As set out elsewhere in this report and within the CAT Policy itself, the intent of evaluating a VCS proposition is to understand the potential Social Return On Investment that their use of a Council asset may have.

9. Property implications

- 9.1 As set out in the 5 September 2018 Cabinet report, assets may be identified as potentially surplus for a CAT in a variety of ways. They are likely to be identified as part of the Corporate Asset Management Plan as it is through this process that an asset is declared surplus. The status of the property, including its tenure, market value in accordance with Royal Institution of Chartered Surveyors (RICS) Valuation- Professional Standards and potential for realisation of a capital receipt, forms part of an assessment as to whether a CAT is an appropriate form of disposal.
- 9.2 The CAT Policy states that the Council will enter into lease arrangements for all CATs unless there are extenuating or special circumstances where a freehold disposal is necessary. Where possible, the Council will look to pass on maintenance and other operating costs of the property to the leaseholder thus providing a financial saving to the Council by reducing its expenditure on a given property. The evaluation of whether a VCS organisation has the abilities, skills and financial resources to take on the terms of any lease will form part of the evaluation process.
- 9.3 In the case of the proposals to make Darlaston Recreation Centre available under a CAT, Cabinet should note that the property will be marketed without restrictions on community uses which may be more expansive than the sporting uses proposed by the previous bidders- where the marketing process only sought to engage sporting clubs/ organisations. Cabinet should also note that in making the property available as a CAT it is highly likely to give rise to bidders who wish to secure longer tenancies (more than 7-years) as their proposals for the site may be linked to funding/ grants from bodies who require this as a condition of the grant. The ability of an organisation to access grants proposed by their business case to support the payment of rents and to maintain the property and associated liabilities will form part of the evaluation of Expressions of Interest and Full Business Cases.

10. Health and wellbeing implications

- 10.1 A CAT and the transfer of an asset to a VCS organisation may have positive outcomes on residents as some of the community services provided by the VCS have a direct impact on health and wellbeing. An evaluation of the potential impact on health and wellbeing will form part of the evaluation that can be understood through the Expression of Interest and Full Business Case processes.

11. Staffing implications

- 11.1 In the first instance the Policy will be administered by the Place Team within the Regeneration and Development Service; it is the responsibility of this service area to carry out the strategic corporate asset management function of the Council. At the time of writing the Policy the expertise to evaluate CAT business cases does not exist within the Place Team and thus it will be necessary to rely on expertise from other Council services/ teams. Notably the process will rely on support from the Localities and Partnership Team, Finance and Legal Services. The Policy has been drawn up collaboratively between the Place Team and Localities and Partnership Team. As stated in paragraph 3.3, the teams involved in the process will be undertaking this CAT for the first time.

12. Reducing inequalities

- 12.1 The implications for reducing inequalities via the CAT Policy have been previously been considered through an Equality Impact Assessment. If it is determined that the Darlaston Recreation Centre is to be made available as a CAT then further testing of reducing inequalities may be possible through the evaluation of Expressions of Interest and Full Business Cases.

13. Consultation

- 13.1 As reported at the 5 September 2018 Cabinet meeting, consultation on the then draft CAT Policy was undertaken. The CAT Policy was developed with One Walsall who supported the engagement and circulated the draft documents via its distribution lists and networks, reaching over 1000 contacts in the VCS. An online survey was also undertaken to gather feedback on the Policy. A workshop was also held in July 2018 to engage a sample group of community representatives who either have experience of a CAT or have shown interest in asset management/ownership in the past. The workshop allowed for feedback on the draft Policy. It was agreed that One Walsall would 'test' the Expression of Interest and Full Business Case templates with a community organisation; run as a 'mock assessment' to understand how the evaluation criteria can be applied. This information has more recently become available and at the time of writing this report further adaptations are being made to the policy ahead of its use.
- 13.2 In the case of the proposals to place the Darlaston Recreation Centre into the market as a CAT is yet to have any further consultation other than that which has taken place with Elected Members through the Economy and Environment OSC meeting 11 April 2019.

Background papers

- Cabinet Report 'Community Asset Transfer Policy' 5 September 2019
- Cabinet Report 'Grant of lease- Recreation Ground, Hall Street Darlaston' 20 March 2019
- Report of the Economy and Environment OSC- 'Grant of Lease – Recreational Centre on Hall Street, Darlaston' 11 April 2019

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23 April 2019



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23 April 2019