

Report of Director of City Development

Report to Executive Board

Date: 7 March 2012

Subject: Community Asset Transfer

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

This report sets out the background to community asset transfer. It outlines the context in terms of Government policy; the benefits of community asset transfer; the Council's experience to date and lessons learned; and, sets out a draft policy and assessment framework for consideration by Executive Board for future community asset transfers.

Community asset transfer is a valuable part of supporting and sustaining the third sector and can bring regeneration and service benefits to Leeds communities. It supports the Leeds Vision aspiration that Leeds will 'be fair, open and welcoming and that all Leeds communities will be successful'.

There has been a number of recent cases where community asset transfer has been proposed as a potentially positive way forward when service reviews have proposed relocation or rationalisation of facilities. The principle of exploring community asset transfer in these circumstances is appropriate. However, in absence of a clear and agreed policy and framework there is a risk that expectations may be raised about continuing Council financial support and about a positive outcome from the Council's assessment of potential community asset transfers even, where the case for doing so may not be sufficiently robust.

The Council currently assesses community asset transfer proposals individually, although using an officer based framework, based on the strength of business plans, taking into account a mix of service, area committee and ward member

support along with corporate considerations including the potential alternative used for the site within the Council or for sale. A framework will provide consistency and guidance to communities, members and officers about the process and will allow more consistent assessment.

Recommendation

Executive Board is asked to consider and agree the proposed draft policy and framework documents attached to this report for use in assessing community asset transfers. The draft will be subject to two month consultation period from 1st April to 31st May 2012 with a final version brought back to Executive Board in July 2012.

1 Purpose of this Report

- 1.1 This report sets out the background to community asset transfer. It outlines the context in terms of Government policy; the benefits of community asset transfer; the Council's experience to date and lessons learned; and, sets out a draft policy and assessment framework for consideration by Executive Board for future community asset transfers.

2 Background information

- 2.1 Community asset transfer is the 'transfer of land or buildings from the Council's management or ownership, into the stewardship of third sector organisations'. Depending on the social, economic or environmental benefits generated, the transfer will be at market value or on a subsidised basis, although in reality it is very often subsidised.

- 2.2 The Council has provided property leases on a 'less than best consideration' basis to community organisations for many years. It was as a result of the Quirk Review 'Making Assets Work – Community Management and Ownership of Public Assets' in 2007 that the term "community asset transfer" came to prominence to describe these type of transactions. The Quirk Review found and recommended that:

- the social or community benefits of community management and ownership of public assets can outweigh the risks and often the opportunity costs in appropriate circumstances;
- a major programme of awareness raising and capacity building for the evaluation of benefits and risks needs to be generated;
- local authorities and other public bodies should take a more corporate approach to their asset portfolio and their relationship with the community sector

- 2.3 The Government's Big Society concept and localism agenda encourage communities to seek empowerment including owning assets that are important to them. This has resulted in increasing community asset transfer requests from community organisations as well as services proposing to offer assets for

community asset transfer. The Localism Act 2011 is likely result in even more interest. A report setting out Assets of Community Value provisions is being considered separately on Executive Board's agenda.

- 2.4 Publicity surrounding the concepts of Big Society and Localism, along with the Government's challenging budget settlement, have led services to look at asset transfer as an option for some of the assets they currently use. There are instances where unrealistic expectations have been built up, which could have been avoided had guidance about the realities of the costs and responsibilities of community asset transfer been available.
- 2.5 An agreed approach is needed so that elected members, Council officers and the community all understand what we are trying to achieve, gives us a framework within which to deal with community asset transfer requests and enables us to consider community asset transfer proactively to meet service or community needs. This approach is set out in the draft policy at Appendix 1.
- 2.6 A consistent approach is proposed which seeks to inform decision making. It seeks to support asset transfer requests that offer value for money and have the capability to deliver and sustain priority community needs or services. It aims to assist officers and elected members of the Council to consider the benefits and risks of each proposal in a consistent manner and where appropriate to use community asset transfers to support its strategic objectives. It will also assist communities and organisations pursuing asset transfers to understand the requirements and the need for robust proposals.

3 Main issues

- 3.1 A number of community asset transfers have taken place with positive results for services and communities. They have led to the restoration of significant building (e.g. SHINE at the old Harehills middle school, and Tiger 11 at the ex-Hillside primary school. They have increased local community involvement and capital and provided a dynamic range of activities in areas in regeneration areas. Community asset transfers have also supported struggling organisations to turn things round. There have been a number of community asset transfer projects in Leeds over the past few years. Recent transfers include:-

Woodhouse Community Centre - Oblong
Cardigan Centre – The Cardigan Centre
Chapelton Enterprise Centre – Unity Enterprise
Leeds Media Centre – Unity Enterprise
Headingley Primary School/HEART – Headingley Development Trust
Middleton Enterprise Centre – Health for All
Harehills Middle School/SHINE – Harehills CIC
Hillside Primary School – Tiger11

- 3.2 Proposals for community asset transfer currently under consideration include:-

Royal Park School – Royal Park Community Consortium
Bramley Baths – Friends of Bramley Baths
Shadwell Library – Shadwell Parish Council & Friends of Shadwell Library

Rawdon Library – Friends of Rawdon Library
Drighlington Library and Meeting Hall – Council offer, no organisation at present
Cow Close Library - Council offer, no organisation at present
Bramley Lawn Day Centre – Bramley Elderly Action
Holbeck Day Centre – Holbeck Elderly Aid
Holbeck Youth Centre – Health for All
Garforth Sports Centre – Schools Partnership Trust
Gildersome Meeting Hall – Gildersome Parish Council
Dolphin Manor – Friends of Dolphin Manor

- 3.3 Each transfer is different, but there are some common issues and lessons to be learned from them all:-

Value

- 3.3.1 In transferring an asset the Council needs to take into account the site value. This is because the Council has a duty to seek best consideration. It is also because the Council needs to consider what value it may be transferring, and the potential opportunity cost in terms of receipt lost, should the Council decide to use its wellbeing powers for a 'less than best consideration' disposal.
- 3.3.2 Some community asset transfers have been on the basis of market value, and some have been at nil consideration. Whilst the cost of purchase is often small in comparison with the likely spend by the organisation on refurbishment, the Council needs to take into account the relative importance of the transfer in delivering Council services (is it an alternative provider or an extra provider?). The Council will also need to take into account extent to which the organisation will need support to get established and to ensure long term sustainability and whether there is a case for a below market disposal or not. The draft policy and framework address this issue.

Tenure

- 3.3.3 Whether buildings should be transferred on a freehold or leasehold basis requires consideration. Quite often organisations assume that community asset transfer means the transfer of the freehold of the property. However, any freehold transfer at less than market value would require us to take steps to protect our investment in a transfer. This is difficult to do if the freehold title is released. Long lease agreements allow us to make sure that properties transferred are used for the purpose intended when the decision was made to transfer the building. Flexibility will be shown in the detail of the lease, but as a general rule use will be limited to being mainly for community benefit. There have not been any circumstances where organisations have been able to show that a freehold is essential to their asset transfer project. The draft policy proposes that any less than market value community asset transfer will only be on a leasehold basis, and that freehold transfers will only take place if full market value is paid.

Loan Dependency

- 3.3.4 The major expense for organisations involved in community asset transfer has generally been the cost of conversion / refurbishment. This can lead to the organisation taking over the asset being under significant financial pressure to meet loan repayments, and presents a major risk to their business plan. This risk

needs full and realistic consideration at the start of any appraisal. In addition, organisations hoping to take forward community asset transfer should consider very carefully the extent to which high quality and costly conservation / refurbishments are necessary. This may be the case with derelict buildings or may be necessary for income generation, but the extent of necessity should be tested. This is an area where some independent advice to the organisation hoping to receive the asset from an organisation like Leeds Ahead may be most valuable.

Service Subsidies

- 3.3.5 Organisations using existing community centres to the point of transfer, including Council services, may not have been paying any or full cost for the use of the facilities. Such agreements can't continue post transfer because it would be to the financial detriment of the organisation taking over the asset, especially if there are loans and other costs to cover. The needs of such organisations and how they are affected by community asset transfer proposals needs to be fully considered between all parties as part of consultation on any such proposed transfer. In proposing a building for closure or a transfer of services elsewhere, a Council service may assume the whole of the saving should be realised. However, it may be that some of the budget will need to be transferred to the Council service using the facility to cover the changes they will have to pay in future. A related issue is where community or third sector organisations are using a transferred asset and the basis upon which they have been using them has been free or subsidised. The business plan of the organisation taking over the asset is unlikely to be able to work if there is free use or an expectation of subsidy that is not covered by a third party (often the Council). The effect on user organisations and the need for them to build in new costs of rent to future grant applications will need to be taken into account in the assessment.

Service Transformation / value for money

- 3.3.6 Where a community asset transfer proposes to replace a Council service the saving to the Council and value for money in the service delivery will need to be taken into account. How this is assessed will depend on the extent to which the Council has a continued service need in that area and the extent to which the proposal deliver in the most cost effective way.

Separation of Service and Buildings

- 3.3.7 In some proposals, a community asset transfer request is submitted to save or continue the service. In some cases, the use of the particular building may have community or emotional importance, but the service could continue in the locality in other buildings, possibly within existing community provision. The draft policy proposes that services and buildings should be viewed separately. If there is a basis on which a service could or should continue, albeit in a different form perhaps through community or voluntary organisation provision, it is a separate matter and test as to whether the service should be run from the original building or not.

Viability Risk Level in Transfers

- 3.3.8 Asset transfer proposals are submitted in the form of business plans and are tested for viability. The test is important so that the Council and the organisation are aware of the risks and the Council in particular is aware of the potential risk that it may be asked for support at a later date should problems arise. The policy and framework

give a consistent approach to testing viability and for the assessment to be taken into account by the organisation wishing to pursue the community asset transfer, and the Council in its decision making about it. Sponsoring services will provide specialist support during the assessment alongside asset management who will ensure consistency. It may be helpful that independent verification is included in the assessment which could be provided through Leeds Ahead or via Locality's Fit For Purpose Healthcheck (Locality was formerly the Development Trust Association) which provides an independent assessment of community organisations' abilities and viability of proposals.

Delays to Disposal

- 3.3.9 There are examples of organisations declaring interest in purchasing assets that have been marketed for disposal. Often these groups do not immediately have access to the necessary finance and ask for marketing to be delayed while they raise funding. Issues such as this will be covered by Assets of Community Value legislation in the Localism Act which will give community groups a period of six months to develop bids for assets that are of community value and have been registered as such. However, consultation on the legislation and experience of fundraising timetables shows that six months is usually the minimum amount of time necessary. It will need to be decided whether the Council's policy will be to work within the Act time limit or whether extensions could be given where there is a very realistic prospect of a community asset transfer at an agreed market value. There are cases where extended periods of time have been given to community organisations that did not have any realistic chances of being able to raise the funding necessary. It is recommended that the standard time allowed is six months, as per the Act, assuming the asset is on the Leeds List of Assets of Community Value. Where there are very special circumstances, when it is the view of the Council that a proposal has significant potential but requires more time, extensions could be agreed.

Social Enterprise, Charities and Wider Community Benefit.

- 3.3.10A number of asset transfer projects have highlighted inconsistencies in subsidies provided to some organisations and not others, particularly in terms of free lets and leases. There is also the risk of transferring an asset to a social enterprise or charity that provides services in a specific area and then having to provide other facilities for that service provision. This is a particular issue in social care where there is a lot of local community or third sector service provision. The draft policy sets out that community asset transfers will have to show the extent to which they benefit the whole of the local community, or where the focus is on specific groups or activities.

Need to Ensure Asset Transfer Decisions Not Taken in Isolation

- 3.3.11 In order to avoid decisions being taken in isolation and without regard to the wider context the draft policy allows for corporate considerations to be taken into account by Council services when considering the potential of community asset transfer as part of their own service transformation plans.

Opportunity Cost

- 3.3.12 The financial impact of a potential community asset transfer needs to be clearly understood. The opportunity cost of any transfer needs to be considered as part of

the decision making process about community asset transfer. If a property is transferred to the local community rather than being sold, the impact on the capital programme will need to be considered. In the past 22 years the council has realised £425m in capital receipts for re-investment in the council's capital priorities. Likewise, if the Council will need to resource any of the refurbishment or grant aid the service, these costs will need to be taken into account. In arriving at a recommendation for (or against) a community asset transfer, the Council will need to balance the community benefits that could be achieved with the transfer against the potential lost capital receipt and any revenue savings that may be achieved in a transfer. In the future this balance will be explicit in reports requesting community asset transfer decisions.

3.3.13 Given the increased interest in community asset transfer there is real potential for a significant impact on the capital receipts programme. The overall impact of community asset transfers on the capital receipts programme will be recorded to keep track of the impact.

The draft policy

3.3.14 It is acknowledged that the circumstances surrounding each community asset transfer proposal is different. However, there is a need for a guiding policy that ensures a consistency of approach while allowing individual characteristics to be considered.

The draft policy sets out guidance about:

- the value paid for any property lease in terms of balancing the impact of any charges payable on the business plan, the community benefit and the need to generate income for the Council. Any subsidised or less than best consideration transfer will require the support of a sponsoring service;
- the scale of the project and the resources of the proposing community organisation will be carefully considered.
- should Council services and users and external organisations currently receiving lettings that are not re-charged have to pay for use after any asset transfer and if not this is likely to make Community Asset Transfers less viable.
- community asset transfer should usually be on a long lease basis of between 25 and 99 years rather than freehold. Freehold transfer should only be considered where full market value is paid;
- consideration must be given as part of the appraisal discussions to the suitability of the property for the service and whether or not the service can be accommodated elsewhere in the community's area;
- where requests are made for a delay in marketing to an asset of community value, the timetable given in the Localism Act be used unless there are exception circumstances Where an extension could be recommended;

- organisations submitting proposals without viable business plans or evidence of the funding required will be rejected and alternative uses for the subject property sought;
- leases will be on a full repairing and insuring basis;
- independent support to the organisation should be offered if necessary to provide an independent assessment /validation of their business plan viability which can then be used as part of the Council's assessment;
- a consistency check will be built into the assessment process so that decision making is clear and that proposals are considered in a consistent way, whilst taking onto account the individual cases and circumstances.

The policy also sets out guidance for circumstances when a community asset transfer would not be considered:

- activities taking place in any transferred asset must be for the benefit of the wider local community. Projects that focus on particular groups, have restricted membership or focus on a specific service delivery will not be considered;
- if there is a need for continuing service delivery from an asset then it will not be made available for asset transfer;
- through an assessment of the capital receipts value, where on a case by case basis, the sale is considered to be a greater priority than the community asset transfer proposal;
- assets that focus on religious worship will only be considered if disposed of at open market value. Proposals from religious organisations to provide facilities for the wider community with open access arrangements can be considered. In such circumstances all faith groups will be treated equally;
- there may be circumstances where we have no immediate use but do have a medium to long term need for an asset. In such circumstances community asset transfer will not be possible, although meanwhile community use would be considered.

3.3.15 Whilst accepting that each community asset transfer will be different, exceptions to these draft policy guidelines, will need a strong business case supported by the sponsoring service directorate.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 During the drafting of this policy consultation has taken place with service areas dealing with economic development, community regeneration and property. Following Executive Board consultation will take place with ward members, area

leaders and the community sector in Leeds, especially with their support organisations such as Voluntary Action Leeds and Locality.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 By its nature as a corporate policy aimed at communities throughout Leeds, the policy will apply across all communities. Individual proposals for community asset transfer will be screened for equality, diversity, cohesion and integration to assess if they have any implications for the equality characteristics. An EIA Screening Form has been completed in relation to the proposed decisions being taken

4.3 Council policies and City Priorities

4.3.1 This policy contributes directly to the Vision for Leeds and the City Priority Plan priorities that Leeds will be fair, open and welcoming and that all Leeds communities will be successful. The strategic outcomes for these priorities include:

- increase a sense of belonging that builds cohesive and harmonious communities;
- Leeds will be a city where there is a strong community spirit and a shared sense of belonging, where people feel confident about doing things for themselves and others;
- Local people have the power to make decisions that affect them;
- people are active and involved in their local communities;
- improved levels of enterprise through creativity and innovation;
- there are more community-led businesses that meet local needs.

4.4 Resources and value for money

4.4.1 The policy itself has no direct implications for resources and value for money. However, the majority of community asset transfer proposals are for leases at less than best consideration and in such circumstances the value of the property needs to be considered alongside the service and community benefits the proposal will produce. It is likely that any subject property would be otherwise be disposed of on the open market and the opportunity costs from not taking this course of action will be included in community asset transfer assessments. It is proposed that the overall impact of lost capital receipts from community asset transfer will be considered quarterly at Asset Management Board and reported to Executive Board along with the capital programme and capital receipts monitoring.

4.4.2 Community asset transfer projects require varying amounts of officer support, both from dedicated community assets officers in Asset Management and from officers in sponsoring services. This is very often dependent on the experience and capacity of the community organisation. It is part of the sponsoring service's role to provide any specialist support in terms of the service being provided.

4.4.3 It is expected that many community asset transfer proposals will involve existing community assets, such as operating community centres. At such centres under Council management, the charging policy does not necessarily link to cost recovery of running the facilities. This very often results in groups paying below

market rate, or even no rent. There are also some Council departments that may not be charged for historic reasons. However, when a community centre is in community ownership, cost recovery will be essential for the business plan. Therefore services carrying out activities for no recharge, external organisations being sponsored and any services who may make a saving from the asset transfer of any building will have to consider how to balance the needs of the service, the viability of the operating organisation and their own budget pressures within the development of community asset transfer proposals. Community organisations can't be expected to subsidise Council services.

- 4.4.1 To ensure consistency of approach, all community asset transfer requests and proposals are managed corporately in Asset Management.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Under section 123 of the Local Government Act 1972, local authorities have a duty to dispose of land and buildings (including the sale of freeholds, granting and assigning of leases and the granting of easements) for the best consideration reasonably obtainable. However, discounts of up to £2m may be agreed by local authorities under the General Disposal Consent (England) Act 2003, subject to them being satisfied that the disposal will secure the promotion or improvement of the economic, social or environmental well-being of the area. Use of other discretionary General Consent powers are also available to local authorities for specified housing purposes. Where use of these powers is to be used, the Council must be satisfied that the lease or disposal terms commit the organisation to delivery of the social, economic or environmental benefits within a defined time period to ensure that the subsidy is justifiable.
- 4.5.2 In some circumstances community asset transfer may have EU State Aid implications. Generally the De Minimis exemption could be used to enable transfer. This exemption allows that aid provided that has a value less than €200,000 to be exempt from State Aid regulations, as long as the total value of De Minimis aid received in any three year period is less than €200,000. If De Minimis doesn't apply, then it is likely for purely local community projects that the State Aid criteria that the transfer has the potential to affect trade between EU member states would not be met, so the aid would be permissible. A very wide interpretation is used for aid having the potential to affect trade between members states so if there is any doubt then legal advice must be sought at the earliest opportunity.
- 4.5.3 The provisions of the Competition Act will have to be taken into account when considering any transfer at less than best consideration.
- 4.5.4 By the nature of the long term agreements required for community asset transfer projects, legal agreements are required to protect all parties. This can lead to considerable legal costs, especially for community organisation who by their very nature generally have limited resources to invest in such costs. To try and minimise such fees for community groups, a template for community asset transfer will be produced that protects the council's position while also providing the usual requirements of community groups and their funders, particularly around assignment and use.

4.6 Risk Management

- 4.6.1 Community asset transfer requests are likely to increase with the Big Society and Localism agenda. A community asset transfer policy will reduce the risk that proposal are assessed inconsistently.
- 4.6.2 Each community asset transfer project will present its own unique risks, but some will be common to most. There will be risks in terms of project failure and the future of assets. These will be addressed throughout proposal development with organisations developing community asset transfer proposals and secured in any resulting lease agreements including restrictions on use and assignment.
- 4.6.3 When a decision is taken to dispose of an asset there is a risk that community groups will form specifically to 'save the building'. Although any such disposal should be covered by Assets of Community Value legislation within the Localism Act, in special circumstances more time may need to be allowed. The risk to the capital programme in terms of a smaller level of receipts and delayed receipts needs to be considered as part of any community asset transfer assessment. The costs of keeping properties open while community organisation develop their plans can be significant and include utilities standing charges, business rates and security. There is also the possibility of reduction in receipt for any property physically deteriorates during the process.

5 Conclusions

- 5.1 Community ownership of assets is a growing area of interest and is promoted as part of the Big Society concept and Localism agenda. It can be a major regeneration catalyst and provide valuable facilities in isolated communities or communities in need. The proposed policy will provide a framework for assessment to be undertaken in a consistent manner to enable Members to consider the merits of each proposal set against other options, such as sale on the open market and reinvestment of receipts against capital funding priorities. It will also provide services with a policy to consider in terms of forward planning and considering how community asset transfer can help them achieve their needs as well as empowering communities.

6 Recommendations

Executive Board is asked to consider and agree the proposed draft policy and framework documents attached to this report for use in assessing community asset transfers. The draft will be subject to two month consultation period from 1st April to 31st May 2012 with a final version brought back to Executive Board in July 2012.

7 Background documents¹

7.1 Equality Impact Screening Form

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.