

## **CABINET – 21 JUNE 2011**

### **ASSET TRANSFER POLICY**

#### **Report by Deputy Director (Growth and Infrastructure)**

##### **Introduction**

1. An initial Asset Transfer Policy was considered by the Capital Investment Board at the start of 2011. This has provided the basis for providing guidance and advice to community groups that have been developing proposals for consideration as part of the Big Society Fund.
2. The experience gained in working with the initial proposals being developed by community groups has identified a number of aspects of the initial Asset Transfer Policy that would benefit from clarification. In addition it has become clear that there were aspects of the initial policy that need refinement.
3. The revised Asset Transfer Policy (Annex 1) put forward addresses these issues.
4. It is proposed that the revised Policy be formally adopted by the County Council as the basis on which proposals for the transfer (to include both grants of leases and transfer of freeholds) of property assets submitted to the Big Society Fund are considered.
5. It is not intended that this Policy be applied retrospectively to existing lease arrangements. However, where there are material changes in the circumstances any new proposal will be reviewed to ensure consistency with the principles with this Policy.
6. This Policy will be kept under review and updated as required in light of experience.

##### **Key Changes**

7. Compared with the initial policy there are two substantive differences.

##### *Leasing an Asset*

8. The initial version of the policy set out that the County Council would ordinarily seek a lease at full market rent, although it also highlighted that there was flexibility to reduce the rent below market value in certain circumstances.

9. During the course of the discussions with the initial proposals for asset transfers it became clear that seeking full market rent could be a major barrier to community groups coming forward with proposals.
10. It is now proposed that the County Council's policy should be to seek a nominal rent (sufficient to cover the costs of administering the lease on an annual basis and any associated costs, including, for example, legal and surveyors costs). It is considered that such an approach would show the County Council's commitment to support community based groups to come forward with innovative proposals.
11. In keeping with the initial version of the policy, the expectation is that the community group entering into the lease will assume the full running costs of the building, including repairs and maintenance.
12. In considering the business case in support of a proposal there will be a need to ensure that the business model is sufficiently robust to enable the group to meet this obligation. The County Council's Property & Facilities service will give potential bidders general advice on the likely scale of any future repairs and maintenance liability to assist them in preparing their business case.

#### *A Cooling Off Period*

13. Indications are that in some locations there may be more than one potential group seeking to secure an asset transfer. It is important that the County Council is satisfied that, prior to finalising the transfer of an asset, it can be confident that there are no alternative community proposals for the use of the asset that need to be taken into account.
14. To that end it is proposed that following a decision by the Cabinet to support a proposal there is an 8-week cooling off period during which the County Council seeks this reassurance.

### **Financial and Staff Implications**

#### *General Consideration*

15. By making an asset available for transfer, the Council is foregoing the capital receipt it would otherwise have received from disposing of the asset on the open market. The value of this will be highlighted in the papers presented to the Cabinet for each proposal.

#### *Purchase of Freehold by Community*

16. By selling the freehold to the community at potentially less than market value, the Council will forego the full capital receipt that it would have received from selling the asset on the open market. The financial implications of selling at less than market value will be highlighted in the papers presented to the Cabinet for each proposal.

*Leasing of Freehold by Community*

17. The decision to seek a nominal rent will result in the County Council foregoing some potential revenue income. However, by seeking only a nominal rent the County Council is providing significant support for the development of community groups and services. The financial implications of a nominal rent will be highlighted in the papers presented to the County Council Cabinet for each proposal.

*VAT implications*

18. There are VAT implications for the transfer of assets to the community:
- (a) Inability of community run facilities to recover VAT once outside County Council control, making VAT an additional cost to be taken into account in any proposals
  - (b) Possible repercussions for the County Council's VAT partial exemption position if any more than a nominal rent is charged.
  - (c) Possible clawback of any VAT incurred by the County Council on any refurbishment costs previous to transfer.

Since nominal rents are proposed, (b) should not be an issue generally, but the VAT implications will need to be considered on a proposal by proposal basis.

*Business Strategy Savings*

19. Delivery of the 25% reduction in the cost of the corporate asset portfolio is not dependent upon the outcome of proposals being considered through the Big Society Fund.

*Staffing Implications*

20. The letting and managing of leases under this Policy will give rise to additional workload for the Property & Facilities service. The additional cost incurred within the current financial year will be met from Property & Facilities' existing budget. The longer-term implications of the County Council increasing the number of leases managed by the service will be considered as part of the forthcoming Service and Resource Planning process.

**RECOMMENDATION**

21. **The Cabinet is RECOMMENDED to agree the Asset Transfer Policy set out in Annex 1**

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Background papers:           None

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## Oxfordshire County Council Asset Transfer Policy

### 1. Introduction

- 1.1. In order to meet the County Council's ambitions around localism and the 'big society' a number of properties are likely to be made available for use by community groups, either on a permanent basis or through a short term lease.
- 1.2. These assets will be made available for transfer unless one of the following principles applies:
  - a) Property revenue savings or capital receipts from the property are needed to contribute to County Council savings;
  - b) There is another County Council or school need for the property which would be difficult to meet in any other way;
  - c) Grant conditions for capital expenditure on the property prevent the property being transferred or prevent a change of use within a specified timescale.
- 1.3. Once it has been decided that an asset can be made available, the County Council will transfer the asset to the community on terms to be agreed, if:
  - a) There is no other local building from which the community could reasonably provide the same service;
  - b) The proposal is financially sound viable and sustainable;
  - c) The proposal represents good value, taking into account the expected community benefits; and
  - d) The proposal as a whole, and in particular the loss of a potential capital receipt due to a discounted sale price, is affordable.
- 1.4. This updated Asset Transfer Policy also clarifies how it will shape the decision making process.

### 2. Assets Available for Transfer

- 2.1. An initial list of assets available for transfer – principally youth centres – was published on the County Council's website in spring 2011 as part of the invitation to submit bids to the Big Society Fund. The list of

assets will be kept up to date and published on the County Council's website as part of the wider register of community assets.

- 2.2. Where the County Council identifies through its Locality Reviews opportunities to reduce its assets these will be added to the list of assets potentially available to communities
- 2.3. Communities are encouraged to seek advice from the County Council at the earliest possible opportunity before making a formal application.
- 2.4. The County Council will provide advice and guidance to communities as they develop their proposal, specifically:
  - It will provide guidance on the valuation of the asset and/or advise on the rental value;
  - It will provide guidance on the likely scale of future repairs and maintenance for the asset;
  - It will provide advice on the structure of the management body required to support community usage of the asset.
- 2.5. Proposals submitted by communities will be considered on a rolling basis:

Proposals submitted by	31 May 2011	Decision by	31 July 2011
	31 Aug 2011		31 Oct 2011
	30 Nov 2011		31 Jan 2012
	28 Feb 2012		30 Apr 2012
- 2.6. The County Council will test any proposal submitted by examining:
  - a) The statement of proposed outcomes that would be delivered by the community use of the asset, including consideration of the extent to which the proposal meets identified local needs as well as broader policy priorities;
  - b) The Business Case submitted in support of the proposal, including contributions from other funding sources towards the cost of the proposal;
  - c) The proposed arrangements for the management body, including evidence of wider support amongst the local community.
- 2.7. Encouragement is given to the submission of innovative proposals that enable the proposed service to be delivered in a more effective and efficient way.
- 2.8. The County Council's Cabinet will make a decision about whether an asset can be transferred on the basis of the proposal put forward by the community within the context provided by this policy.

**3. Key Principles of Asset Transfer**

- 3.1. The County Council will consider proposals from communities for purchasing the freehold of an asset as well as proposals for leasing the asset.

*Purchasing the Freehold*

- 3.2. In general the County Council is required to achieve the 'best consideration reasonably obtainable' when it is disposing of land. If it seeks to dispose of land or buildings below the market value, it has to obtain the consent of the Secretary of State for Communities and Local Government.
- 3.3. However, the County Council will use its powers under the General Disposal Consent 2003 to transfer land at less than its market value, without the need to seek specific permission from the Secretary of State, provided that:
- a) The purpose for which the land is to be transferred is likely to contribute to the 'promotion or improvement' of the economic, social or environmental well-being of the area; and
  - b) The difference between the market value for the land and the actual price paid for the disposal (if any) is not more than £2m. (Also providing that the reduction in price does not breach State Aid Rules)

- 3.4. The County Council will determine the market value on the basis of the potential use of the asset.

- 3.5. Where the transfer is on the basis of providing specific community services, the County Council will seek to secure a commitment to the future delivery of those services through an agreement with the community. Where appropriate this commitment will be secured through a Restrictive Covenant.

- 3.6. Provision will be included within the transfer for the County Council to recoup an appropriate proportion of any uplift in value secured subsequently through a change of use.

*Leasing an Asset*

- 3.7. Ordinarily the County Council leases its property to third parties at full market rent.
- 3.8. However, as part of its contribution to encouraging successful community based proposals, the County Council will normally seek a nominal rent for assets provided that:

- a) The proposed tenant is providing a statutory service on behalf of the County Council; or
  - b) The proposed tenant is contributing to meeting the County Council's corporate objectives; or
  - c) The proposed tenant is providing services that will benefit the local community either socially, economically or environmentally; or
  - d) The service proposed by the tenant is accessible to a wide section of the local community.
- 3.9. The County Council will typically grant leases contracted out of the Landlord & Tenant Act of up to 5 years in order to provide flexibility for both parties.
- 3.10. The community group entering into a lease will be expected to assume responsibility for the full running costs of the building, including repairs and maintenance.
- 3.11. Where there is a need for planning permission to be secured in order to enable a proposal to be taken forward this will be the responsibility of the community group. A decision on the part of the County Council to transfer an asset does not guarantee that planning permission will be granted.
- 3.12. The Business Case in support of a proposal will be expected to demonstrate that the business model is sufficiently robust to give confidence that the obligations for repairs and maintenance will be met.
- 3.13. Any lease will be limited to the intended community use on which the proposal was submitted. The agreement will provide for the lease to be terminated if that use ceases.
- 3.14. Any capital expenditure on an asset by a third party must be agreed and formalised at the commencement of, and as part of, the lease agreement.

*General Conditions*

- 3.15. Any transfer will **include** fixtures and fittings.
- 3.16. Any transfer will **exclude** IT infrastructure.

*Decision Making Process*

- 3.17. All proposals for asset transfer will be considered by the County Council's Cabinet.



- 3.18. Where more than one proposal is submitted in respect of an asset the County Council's Cabinet will consider these on an equal basis. Encouragement will be given to competing proposals to work together where possible to put forward a joint proposal.
- 3.19. Following the Cabinet's decision to support a proposal there will be a 'cooling-off' period, typically of 8-weeks. During this period the County Council will seek assurance that there are no alternative proposals for the use of the asset that need to be taken into account.
- 3.20. Where an alternative proposal is submitted the County Council Cabinet will consider this within the context of the original proposal considered.
- 3.21. In the absence of any alternative proposal coming forward, the original decision of the Cabinet will be taken forward.

#### 4. **School Sites**

- 4.1. If the asset is located on a school site and there is a recognised educational/curriculum need for the asset, then transfer to the school will be considered subject to the need being supported by the Director of Children Education and Families. In such cases all revenue liabilities for the property will transfer to the school, including delegated repairs and maintenance responsibilities
- 4.2. If the asset is not required for educational/curriculum purposes and it can be separated to allow for disposal the County Council will include it on the list of assets available for community use.
- 4.3. If the school is interested in taking over the running of the service then their bid will be assessed alongside any other community interest
- 4.4. Where the transfer is on the basis of providing specific community services, the County Council will seek to secure a commitment to the future delivery of those services through an agreement with the community.
- 4.5. If an asset is transferred to a school that later becomes a Foundation School or an Academy (or similar) then the asset will transfer to the Foundation School/Academy along with the other school assets at that time.
- 4.6. The government has stated its expectation that former school buildings should be made available for the creation of 'free schools'. However, it has yet to clarify whether there will be a statutory underpinning of this and, if so, whether there should be a competitive award process that includes potential alternative uses. Likewise, it is unclear whether it is expected that 'free school' promoters would be expected to purchase or lease such buildings, and whether at a market or other rate.

**Oxfordshire County Council**  
**May 2011**