

Cheltenham Borough Council

Cabinet – 15 March 2011

Property Lettings and Disposals to the Third Sector, Voluntary and Community Groups Report

Accountable member	Cabinet Member Built Environment, Councillor John Rawson
Accountable officer	Head of Property Services, David Roberts
Accountable scrutiny committee	Environment
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>The issue</p> <p>The Council has, over many years, entered into a variety of property letting arrangements with the voluntary or 'third sector', sometimes providing grant assistance or preferential tenancy terms, thereby subsidising the provision of services deemed to be of community benefit.</p> <p>Increasingly, the Council is being asked to consider letting property, or granting interests in property to community-based organisations on a subsidised basis, rather than at 'best consideration'.</p> <p>Current arrangements cover some 35 properties including:-</p> <ul style="list-style-type: none">• third sector, community & voluntary groups with a matching grant;• third sector, community & voluntary groups with no grant but currently occupying rent free;• third sector, community & voluntary groups that were initially grant funded for a preset period and supposed to revert to open market value, but not pursued as the organisation is financially vulnerable. <p>Typically, in line with the Council's property disposal strategy, each individual case has been and will be reported to Cabinet as and when the need arises.</p> <p>A more consistent, transparent and streamlined process has been developed to facilitate officer negotiations with tenants or purchasers by the development of an assessment tool and matrix, outlined in Appendix 2, and that is the subject of this report.</p>
Recommendations	<p>Cabinet approves the Assessment Tool and Matrix for determining the eligibility for rent subsidies of properties let by Cheltenham Borough Council to third sector, voluntary and community groups. Cabinet delegates authority to the Head Of Property and Asset Management in negotiation with the Cabinet Member Built Environment to adopt the framework for assessing subsidy levels as per Appendix 5 subject to any amendments following a consultation period with the Voluntary Community Sector.</p>

Financial implications	<p>The Council faces significant budgetary challenges in continuing to support the current range of services provided either directly or indirectly by the Authority.</p> <p>The financial implications of any revised or additional support to third sector or community organisations need to be considered carefully in light of the Council's corporate priorities and the medium term financial strategy.</p> <p>Contact officer: Mark Sheldon, Chief Finance Officer email mark.sheldon@cheltenham.gov.uk. 01242 2644123</p>
Legal implications	<p>Under S123 Local Government Act 1972, leases for a term greater than 7 years must be for the best consideration reasonably obtainable. The only exemption to this is where the letting at less than best consideration contributes to the 'social, economic or environmental well-being' of the Council's area or residents. Whilst leases for a term of less than 7 years do not have to be for the best consideration reasonably obtainable, the Council must still have regard to its general fiduciary duty.</p> <p>The Council must not fall foul of rules against State Aid. State Aid occurs when financial assistance is given by a public body which favours certain organisations and distorts or threatens to distort competition between Member States of the EU. Letting at an undervalue to community organisations will not comprise State Aid if:</p> <ul style="list-style-type: none"> • The proposed tenant is a not for profit organisation; • The use of the building will be for a community purpose; and • The activities carried out by the organisation(s) are of local interest only. <p>Contact officer: Donna McFarlane, Solicitor Onelegal email donna.mcfarlane @tewkesbury.gov.uk, 01242 775116</p>
HR implications	None

<p>Key risks</p>	<p>Statement on Risk (see Appendix 1)</p> <ul style="list-style-type: none"> • Medium – the matrix seeks to put in place a degree of objectivity in assessing the level of subsidy and reducing the risk of setting adverse financial precedents with the granting of overly generous subsidies, or in the disposal of property interests which would impact on the Medium Term Financial Strategy (MTFS); • Medium – the matrix helps in assessing the viability of the organisation in the provision of the services; • High - if the recommended assessment matrix and transparent legal agreements are not implemented this could reduce the Council's ability to remove tenants; • Low – if the applicant's Business Plan is not robust (which will be an integral part of the assessment, as it helps to identify the more risky ventures that would be prone to failure), this could have an adverse impact on the reputation of the Council.
<p>Corporate and community plan Implications</p>	<p>Enhancing and protecting our environment</p> <ul style="list-style-type: none"> • Using our property assets effectively for the benefit of the community; <p>Strengthening our economy</p> <ul style="list-style-type: none"> • Contributing to the work of regional and local partnerships; <p>Strengthening our communities</p> <ul style="list-style-type: none"> • Working in consultation with the community, community groups and the voluntary sector; • Recognising, promoting and assisting community groups and volunteers.

1. Background

- 1.1 In March 2010 a report was submitted to Cabinet titled 'Property Lettings and Disposals to the Third Sector, Voluntary and Community Groups' (Agenda item 6), which set out a framework of principles to be applied to each CBC owned subsidised property (copy attached in **Appendix 3**). Cabinet resolved to accept the framework of principles outlined.
- 2.2 In July 2010 Cabinet approved the Asset Management Plan 2010-2015 with a revised Appendix H (Policy for Property lettings and disposals to the third sector, voluntary and community groups). This document redefined and amended the previous March 2010 Cabinet report. An extract of the Policy is set out in **Appendix 4**.

2. Reasons for recommendations

- 2.1 Over many years, the Council has allowed various subsidised arrangements in relation to the letting of its land and buildings to voluntary, community or third sector organisations, without having an explicit set of guiding principles to underpin related decision making. The Council now has an agreed policy framework and a set of principles, but needs to agree the eligibility and assessment criteria. The proposed criteria and discount rates are set out at **Appendix 2**.
- 2.2 The spreadsheet in **Appendix 5** (an exempt item) outlines the current arrangements and third sector organisation commitments with indicative rent subsidies calculated in accordance with the above guidelines. On agreement of the assessment tool and matrix it is proposed to revise the current rent arrangements.

3. Consultation and feedback

- 3.1 Consultation has been carried out individually with Corporate Asset Group officers, cross-party Asset Management Working Group (AMWG) members and specifically with the Leader of the Council and Cabinet Member Built Environment.
- 3.2 AMWG discussed the draft report on the 24th February 2011 and resolved that the report be recommended to Cabinet for approval on the 15th March 2011. The framework will be sent to the Voluntary Community Sector organisations across Cheltenham via Cheltenham Voluntary and Community Action to receive comments over a four week period to be taken into consideration by the Head of Property and Asset Management in consultation with the Cabinet Member Built Environment.

4. Performance management – monitoring and review

- 4.1 The new arrangements will be monitored and reviewed by the AMWG.

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<p>Appendices</p>	<ol style="list-style-type: none"> 1. Risk Assessment 2. Eligibility of rental discounts to third sector, voluntary and community groups – Assessment Tool 3. Cabinet Report 16th March 2010, Report of the Cabinet Member Built Environment, 'Property lettings and disposals to the third sector, voluntary and community groups' 4. Adopted Asset Management Plan 2010-2015 with a revised Appendix H (Policy for Property lettings and disposals to the third sector, voluntary and community groups). 5. Spreadsheet outlining the current lease arrangements with the third sector, voluntary and community groups plus sports organisations with indicative rent subsidies. (please note this is exempt)
<p>Background information</p>	<ol style="list-style-type: none"> 1. 'Making Assets Work' - The Quirk Review of community management and ownership of public assets.

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	Financial; the risk of setting adverse financial precedents with granting of overly generous subsidies, or in the disposal of property interests which could impact on the MTFS	DR	2011	4	2	8	Accept	Corporate Asset Group assessment and Cabinet approval required on each subsidy request.	asap	DR	
2	Financial; the viability in the provision of the services	DR	2011	3	3	9	Accept	Corporate Asset Group assessment and Cabinet approval required on each subsidy request.	asap	DR	
3	Financial/Legal: if the recommended assessment matrix and transparent legal agreements are not implemented this could reduce the Council's ability to remove tenants	DR	2011	4	4	16	Accept	Corporate Asset Group assessment and Cabinet approval required on each subsidy request.	asap	DR	
4	Reputation:.. if the applicant's Business Plan is not robust this could have an adverse impact on the reputation of the Council	DR	2011	2	2	4	Accept	Corporate Asset Group assessment and Cabinet approval required on each subsidy request.	asap	DR	

Eligibility of rental discounts to third sector, voluntary and community groups – Assessment Tool

This Assessment Tool for determining the eligibility of rent subsidies of properties let by Cheltenham Borough Council to the third sector, voluntary and community groups, should be read in conjunction with the 'Policy for Property Lettings and disposals to the third sector, voluntary and community groups,' found at Appendix H of the related July 2010 Cabinet Paper.

The Policy for Property Lettings and disposals to the third sector, voluntary and community groups states:

'As a general rule, when leases are due to be renewed, and at the Cabinet's discretion, buildings that are operating primarily as social or sports clubs *with a paying membership* [our emphasis] should be given the standard 20% discount against the full market rent that applies to all charities hiring Council property.

Buildings being leased to organisations that are open *to the community at large* and *are working to further the aims of the council's community plan* [our emphasis] can be given up to 100% discount, subject to a business plan outlining their activities, how they align with the corporate or community plan and how they intend to make their activities sustainable.'

Cheltenham Borough Council's Corporate Strategy 2010-2015 identifies 3 key community objectives, which are as follows:

- Enhancing and protecting our environment
- Strengthening our economy; and
- Strengthening our communities

These are supported by an additional 'cross-cutting' objective of

- Enhancing the provision of arts and culture

Rental subsidies will be determined by the degree to which organisations support these objectives in their business plans.

Alongside the Corporate Strategy is Cheltenham's Sustainable Community Strategy 2008-2011. This Strategy identifies nine priorities for Cheltenham:

- Promoting Community Safety
- Promoting Sustainable Living
- Promoting a strong and sustainable economy
- Building healthy communities and supporting housing choice
- Investing in environmental quality
- Investing in travel and transport
- Investing in arts and culture
- A focus on children and young people

Nearly all of these priorities 'fit' in some way with the 4 related objectives in the Council's Corporate Strategy. The focus on children and young people is however more cross-cutting. In view of this, and the recognition that the Community Strategy has given the need for a clear focus on children and young people, any organisation whose work has such a focus, which improves those outcomes for children and young people, as identified within Every Child Matters, will also be given recognition for this when calculating rent subsidies.

Calculating the Rent Subsidies

The Corporate Asset Group will form an Assessment Panel to review each property rent subsidy request. Where an organisation is able to demonstrate clearly and to the satisfaction of the Assessment Panel that it is making a significant contribution to one or more of the objectives identified within the Corporate Strategy and/or the outcomes for children and young people, as identified within Every Child Matters, it will be entitled to a 20% discount on the rental costs for significantly contributing to each objective/priority.

The Cabinet reserves the right to award an additional discount in exceptional cases, where the organisation concerned has demonstrated, via a clearly evidenced business plan, that they are providing a comprehensive community benefit which is not satisfactorily reflected through the application of the rental discount criteria specified within this document.

Organisations will only have the power to sub-let with the agreement of the Council, which will not be unreasonably withheld so long as the income is used to further the aims and activities of the organisation.

This discount will be staggered incrementally, as follows:

One objective	– 20% discount
Two objectives	– 40% discount
Three objectives	– 60% discount
Four or more objectives	– 80% discount

As agreed by the Cabinet in July 2010, a further 20% discount is available to any charity renting Council property.

As a general rule, when leases are due to be renewed and at the Cabinet's discretion, buildings that are operating primarily as social or sports clubs with a paying membership should be given the standard 20% discount against the full market rent, that applies to all charities renting Council property.

The following Assessment Matrix identifies the objectives currently identified within the Corporate Strategy and the Sustainable Community Strategy, and provides a framework for calculating the rental subsidies.

It is the responsibility of the Cabinet, acting on the advice from the Cabinet Member responsible for Community Development, following consultation with relevant officers and Cabinet portfolio holders, to decide whether or not the organisation contributes sufficiently to the Council's Corporate Plan or the Local Strategic Partnership's Community Plan, to merit a discount on the rent and what the level of discount should be.

Assessment Matrix

Name of Organisation:	Registered Charity? Yes/No	Does the organisation have a paying membership? Yes/No	% subsidy awarded
Based on their Business Plan, what contribution does this organisation make to the Council's Corporate Strategy and/or Cheltenham's Sustainable Community Strategy?	Which objectives does the Organisation significantly contribute towards? (Tick and give reasons where appropriate)	Does the business plan show how these activities are sustainable? Yes/No (Give reasons where appropriate)	
Objective 1: Enhancing & protecting our environment (includes investing in environmental quality, investing in travel and transport and promoting sustainable living)			
Objective 2: Strengthening our economy			
Objective 3: Strengthening our communities (includes promoting community safety, promoting housing choice, building healthier communities and supporting older people)			
Objective 4: Enhancing the provision of arts and culture			
Objective 5: A focus on children and young people i.e. where One or all of the following outcomes for children and young people are met: <ul style="list-style-type: none"> - Be healthy - Stay safe - Enjoy & Achieve - Making a positive contribution - Achieving economic well-being 			

State Aid avoidance checklist:-

- Is the proposed tenant a not for profit organisation?
- Is the use of the building for a community purpose?
- Are the activities carried out by the organisation of local interest only?

Date of Assessment:

Assessed by: Name and Job Title(s)

Signature(s)