

## Cheltenham Borough Council

Cabinet – 16<sup>th</sup> March, 2010

### Asset management

#### Property lettings and disposals to the third sector, voluntary and community groups

#### Report of the Cabinet Member Built Environment

### 1. Executive Summary and recommendation

#### 1.1 The issue

1.2 The Council has, over many years, entered into a variety of property letting arrangements with the voluntary or so-called 'third sector', sometimes providing grant assistance or preferential tenancy terms, thereby subsidising the provision of services deemed to be of community benefit.

1.3 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'.

1.4 Current arrangements cover some 34 arrangements including:-

- 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.

1.5 Typically, in line with the Council's property disposal strategy, each individual case has been reported to Cabinet as and when the need arises. This process can be both time consuming and due to the issues involved, can be a disproportionate drain on officer time.

1.6 A more consistent, transparent and streamlined process is needed to help facilitate officer negotiations with tenants or purchasers and that is the subject of this report.

1.6.1 I therefore recommend that Cabinet:-

1.6.2 **Agrees to consider lettings or disposals to the third sector on the recommendation of a 'sponsoring service' (as defined in the report) and a relevant Cabinet member at less than best consideration, based upon the framework of principles set out at Appendix A;**

1.6.3 **Agrees the set of principles outlined at Appendix A, to be applied by the Head of Property and Asset Management in framing recommendations to Cabinet as**

**to whether a voluntary sector letting or disposal merits (or continues to merit) a monetary discount, at what level and on what terms.**

## **1.7 Summary of implications**

### **1.7.1 Financial**

The Council faces significant budgetary challenges in continuing to support the current range of services provided either directly or indirectly by the authority.

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.

**Contact officer: Mark Sheldon, Chief Finance Officer**

**E-mail: [mark.sheldon@cheltenham.gov.uk](mailto:mark.sheldon@cheltenham.gov.uk)**

**Tel no: 01242 264123**

### **1.7.2 Legal**

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.

Legal advice was sought on whether this policy would 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. The advice is that the letting at an undervalue to community organisations will not be State Aid if:

- 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.

**Contact officer: Donna McFarlane**

**E-mail: [donna.mcfarlane@tewkesbury.gov.uk](mailto:donna.mcfarlane@tewkesbury.gov.uk)**

**Tel no: 01242 775116**

## **1.8 Implications on corporate and community plan priorities**

### 1.8.1 An excellent and sustainable council

- Using our property assets effectively;
- Recognising and promoting the role of community groups and volunteering;
- Contributing to the work of regional and local partnerships.

### 1.8.2 Building strong communities

- Empowering communities, community groups and the voluntary sector.

### 1.9 Statement on Risk

- Medium - if the Council is overly generous in subsidising tenancies with grant, or in the disposal of property interests, there is the potential for financially adverse precedent-setting implications, resulting in reduced income from assets and cumulative impacts on the Council's medium term financial strategy;
- Medium - failure to provide appropriate support to community-based organisations and services could result in such organisations becoming unviable and the services provided could be lost, to the detriment of the social and economic well-being of the town;
- High - if appropriate and transparent legal agreements are not put in place, tenants may be more difficult to remove if they fail to meet the terms of any subsidised letting arrangement, with the potential for associated adverse publicity for the Council;
- Medium - if prospective tenants cannot demonstrate a robust business plan when taking on property commitments from the Council, there is an increased risk of failure and associated financial and reputation impacts for the authority.

## 2. Background

- 2.1** This report informs Cabinet of the arguments for a more streamlined policy for certain property transactions involving community groups and social enterprises. It puts forward the principles that should be applied in determining whether or not to grant concessions in relation to such arrangements.
- 2.2** The Council's current disposal strategy states: 'subject to any policy decision by the Cabinet, all proposed disposals at less than best consideration will be referred to Cabinet for approval, prior to any commitment by the Council to the transaction.'
- 2.3** This report proposes that Cabinet agrees 'in principle' to disposals to the third sector at less than best consideration, based upon an agreed framework. The assessment framework will be applied by the Head of Property and Asset Management prior to making any recommendations to Cabinet regarding lettings to the voluntary or third sector at less than best consideration.
- 2.4** The aim is to create a more streamlined, consistent and transparent approach to dealing with voluntary sector disposals.
- 2.5** Proposed disposals at less than best consideration will be subject to consultation with the Asset Management Working Group before being referred to Cabinet for approval and prior to any commitment by the Council to the transaction.

### **3. Proposed principles**

- 3.1** Voluntary, or third sector groups, have a broad diversity of purposes and missions and therefore, a set of principles needs to be agreed, in order that a uniform approach can be taken with each individual case. In the majority of cases, these principles should enable the Head of Property and Asset Management (in consultation with the Cabinet Member Built Environment), to make consistent, transparent and efficient recommendations as to whether a third sector disposal merits a monetary discount, at what level and on what terms (see Appendix A for proposed principles).
- 3.2** If the recommendations in this report are accepted, officers will ensure that appropriate documentation is maintained to show how the agreed principles have been applied to each case and the results of the consultation with the sponsoring Cabinet member, prior to making recommendations to Cabinet.
- 3.3** Where appropriate, arrangements may also be subject to consultation with the Corporate Asset Group (officers) and the Asset Management Working Group as well as being subject to the Council's normal auditing processes.
- 3.4** 'Premises held for community or third sector purposes' - this category of property includes all premises let, or otherwise made available to the third sector by the Council.
- 3.5** The key aim is to create transparency in the opportunity costs of making property available to the third sector and the value added by the third sector in helping to meet Community Plan objectives.
- 3.6** Sponsoring services will need to demonstrate the benefits of premises being let to voluntary or third sector organisations. The Council intends, over time, to move all third sector occupiers of its property onto arrangements reflecting the full market value and opportunity costs, together with a service agreement (where appropriate) which sets out the services to be provided and which may include a grant (or clearly identified rent reduction) to reflect the value of the letting to the community. Service agreements (which should ideally be structured on at least a three year basis) will be managed by the relevant 'Sponsoring service', together with appropriate performance monitoring arrangements.
- 3.7** As a guiding principle, the Council will, wherever practicable, seek to support and encourage third sector, voluntary or community organisations to become more self sufficient and less reliant upon on-going financial support from the Council.
- 3.8** To this end, the Council is supportive of the potential identified by the Quirk Review for the transfer of publicly-owned assets to accountable, community-based organisations, particularly where this can facilitate the achievement of objectives set out in the Community plan or the Council's business plan.
- 3.9** In summary, all lettings by the Council will start from the basis of a commercial or market rate clearly set out in the tenancy agreement and any subsidy, either in the form of a specific performance-related grant or reduction in the market rent will be explicitly identified.

### **4. Sponsoring service**

- 4.1** The decision on whether a particular third sector organisation should be offered

Council property at less than 'best consideration' needs to be related to the assessed benefits of the service it provides to the community. If the arrangement is subsidised in any way, it must avoid falling foul of European legal requirements relating to state aid.

- 4.2** These are issues which the Assistant Director (AD) with responsibility for the type of service provided by the voluntary or third sector organisation is usually best positioned to determine, in consultation with his or her Cabinet member. That AD would be the lead for the 'sponsoring service' that the third sector organisation and the Head of Property and Asset Management would need to consult with, in determining an appropriate recommended level of grant to offset the assessed market rent. The sponsoring service will also need to determine whether there is a need for a related performance contract in the form of a service level agreement, in consultation with the relevant Cabinet member.
- 4.3** Where there is no obvious 'sponsoring service' this will be determined in consultation with the Leader of the Council.

## **5. Consultation**

- 5.1** Consultation has been carried out with the officer Corporate Asset Group (CAG), cross-party Asset Management Working Group (AMWG) and specifically with the Leader of the Council and Cabinet Member Built Environment.
- 5.2** CAG was strongly of the view that in view of the identified funding gap in the medium term financial strategy, commercial properties should only be considered for letting at a sub-market rent as a last resort. In the event that marketing such properties fails to identify a suitable commercial tenant or purchaser, alternative offers will be considered or invited from voluntary or third sector organisations.
- 5.3** Existing community organisations supported by the authority will need to be considered on a case by case basis, with a view to the long term sustainability of their financial arrangements.
- 5.4** AMWG was of the view that whilst the Council's income from its assets was an important consideration, a careful balance needs to be struck which recognises the community benefits which can accrue from properties let or transferred to the third sector.
- 5.5** Some property assets have been occupied by community users for many years and others may at times be difficult to let. Members would like to have the option of letting such assets at below market rent where there is a demonstrable community benefit.

## **6. Conclusions**

- 6.1** 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.
- 6.2** This has given rise to a range of issues which this report seeks to address, by setting out a more structured approach that will be more consistent, transparent and streamlined, ensuring decisions are informed by a framework of agreed principles.

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<b>Background Papers</b>	'Making Assets Work' - The Quirk Review of community management and ownership of public assets.
<b>Report Authors</b>	Joanna Sill, Property Surveyor 264365 <a href="mailto:joanna.sill@cheltenham.gov.uk">joanna.sill@cheltenham.gov.uk</a>  Mike Redman, Assistant Director Built Environment, Cheltenham 264160 (Ext 4160) <a href="mailto:mike.redman@cheltenham.gov.uk">mike.redman@cheltenham.gov.uk</a>
<b>Accountability</b>	Cabinet Member Built Environment
<b>Scrutiny Function</b>	Environment

## Appendix A

**Proposed principles****Disposals**

This policy will not apply to public services which are commissioned or contracted out to third sector organisations and which have a clear monetary or commissioned value to the Council to i.e. Instances such as where a third sector group takes over the management or provision of a service on behalf of the Council should be dealt with separately. In these cases formal contracts or service level agreements would invariably be applicable.

**New lettings**

- The proposed disposal must fall within a general consent (as set out at Appendix B);
- There must be a 'sponsoring service' and a relevant Cabinet member in support of the disposal at less than best consideration;
- The proposal must contribute towards meeting identified priorities in the current Community Plan and/or Corporate Business Plan;
- A business plan must be submitted, clearly indicating the community benefits of the proposed operation and its financial viability over both the short and longer term;
- There must be a clear request for a discount on the basis that the funds are not available to meet the full market rent, but indicating how the proposal will be sustainable in the longer term;
- If a planning consent will be required, there must be a reasonable prospect that this can be obtained in a timely fashion, as advised by the Council's Development Control Manager;
- In the case of municipal shops, any related shopping facilities must not be adversely affected;
- The current state / condition of the premises and any proposed repairs by the incoming tenant will be taken into account in assessing the market rent.

**Existing leases**

*i.e. an existing third sector tenant is unable to meet the increase in rent following a rent review or lease renewal, or they have requested a 'rent holiday'.*

- Up to the last three years business accounts must be submitted as evidence of a current inability to pay the full rent;
- The proposed disposal must fall within a general consent (see Appendix B);
- There must be a sponsoring service and a relevant Cabinet member in support of the disposal at less than best consideration;
- The proposal must contribute towards meeting identified priorities in the current Community Plan and/or Corporate Business Plan;
- A business plan should be submitted, clearly indicating the community benefits of the proposed operation and how it will be viable in the longer term;
- In the case of municipal shops, any related shopping facilities must not have been adversely affected by the existing tenancy.

### **Temporary licences**

*E.g. Access licences to cross Council land. These are not classed as a disposal and therefore the disposal strategy does not apply and neither does 'opportunity cost'.*

- Access must be necessary to allow the organisation to function;
- The applicant must exempt from the State Aid rules as set out under Legal implications (see paragraph 1.6.2 above);

*An 80% discount will be applied in the case of temporary licences, to align with the discount given to charities on business rates.*

### **Legal documentation**

- The unrestricted market value of any disposal should be noted in the legal documentation, so as not to risk undermining the value of other Council assets;
- The unrestricted market value of the disposal should be noted in the financial accounts;
- The Council should be able to request an annual progress report on the operation if it so chooses;
- The Council will include appropriate rent review periods and mutually acceptable break clauses in all new letting arrangements, to provide financial assurance for both the authority and its tenants;
- If the tenant or use changes, the Council will have the option to withdraw from the agreement;
- The disposal must comply with European legislation relating to state aid.

## General disposal consent

Under S123(2) of the Local Government Act 1972 the consent of the Secretary of State is required to carry out a disposal at less than best consideration.

From time to time, the Secretary of State issues so-called 'General Consents' which apply to disposals meeting specified criteria. Where a general consent has been issued, a qualifying disposal can proceed without the need for referral to the Secretary of State. The General Disposal Consent (England) 2003 applies to disposals where:

- a) The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole of the whole or any part of its area, or of all or any persons resident or present in its area:
  - i) the promotion or improvement of economic well-being;
  - ii) the promotion or improvement of social well-being;
  - iii) the promotion or improvement of environmental well-being; and
  
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)