

REPORT FOR DECISION



DECISION OF:	Cabinet
DATE:	26 July 2017
SUBJECT:	Community Asset Transfer Policy
REPORT FROM:	Leader of the Council
CONTACT OFFICER:	Alex Holland Head of Property & Asset Management
TYPE OF DECISION:	EXECUTIVE (KEY DECISION)
FREEDOM OF INFORMATION/STATUS:	Public Domain
SUMMARY:	The policy provides a structure to objectively consider transfers of Council owned property assets to the Community to support continued delivery of services.
OPTIONS & RECOMMENDED OPTION	<p>Cabinet is requested to:</p> <ol style="list-style-type: none"> 1. Approve the Asset Transfer Policy, which is described within the report and contained within Appendix 1. 2. Approve the delegation of decisions over applications for Community Asset Transfer to the Chief Executive, the Executive Director of Resource and Regulation and the Head of Property and Asset Management, in consultation with the Leader of the Council and the relevant portfolio holder.
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Community Asset transfer can result in alternative benefit or value to the community in return for transferring Council property

	assets at less than best consideration.
Health and Safety Implications	Risks and mitigations to be identified and agreed for each transfer considered.
Statement by Executive Director of Resources (including Health and Safety Implications)	This proposal supports the Council's wider ambitions to give communities greater control, influence and input into their areas.
Equality/Diversity implications:	The adoption of a Community Asset Transfer Policy that objectively considers applications against key tests will help to ensure there is a consistent and transparent approach.
Considered by Monitoring Officer:	Legal advice has been sought in preparing this policy. Legal advice and support will also be sought when considering the grant of a community asset transfer.
Wards Affected:	All wards
Scrutiny Interest:	Internal Scrutiny

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
12 th June 2017	✓		
Scrutiny Committee	Cabinet/Committee	Council	
	✓		

1.0 PURPOSE OF THE REPORT

1.1 To set out a Community Asset Transfer Policy for the Council.

1.2 The key aims of the policy are to:

- Support voluntary and community organisation contributions to Bury neighbourhoods
- Provide a fair and transparent framework for community asset transfer of Council owned property assets (land and buildings).
- Help the Council to achieve savings in its costs of managing property.
- Support continued delivery of services through transfer to voluntary and community organisations, where this is appropriate.

1.3 A Community Asset Transfer is at the discretion of the Council. It is not a part of community organisations' statutory right to nominate assets for inclusion in the Council's register of Assets of Community Value, nor the Right to Bid to provide services.

2.0 BACKGROUND

2.1 The Council recognises the positive contributions that voluntary and community groups make to their neighbourhoods. The purpose of this policy is to facilitate and support communities to access Council property assets for this purpose, while protecting the Council's financial integrity, fiduciary duty and wider accountabilities, such as Health and Safety.

2.2 Community Asset transfer provides an option for property assets and services challenged as a result of cuts to funding.

2.3 The Council has committed itself to engage with communities through neighbourhood working to improve the environment, promote early intervention and prevention and promote self care. Putting in place a Community Asset Transfer Policy is an active management step to support the people of Bury to reduce their reliance on government funding.

2.4 The extent of Community Asset Transfer can range from unrestricted freehold sale at full market value, where the community group is offered first refusal to purchase, through to short term leases where the Council retains liabilities, responsibilities and costs.

2.5 Community asset transfer usually involves a sale or lease of Council, or other publicly owned property assets, at less than full market value as a means to further local social, economic and / or environmental objectives.

3.0 SUMMARY OF KEY MATTERS

3.1 Community Asset Transfer can be used as a facilitator of social, environmental and community regeneration.

3.2 The transfer of assets to voluntary and community organisations' can strengthen confidence and ties with neighbourhoods and can sometimes enable new investment to be attracted.

- 3.3 A Community Asset transfer policy endorses this approach and provides a structure to consider the potential continuation of services or activities that would otherwise be at risk due to financial pressures, e.g. by reducing or removing property running costs.
- 3.4 Community Asset Transfer has potential to give communities greater control, influence and input into their areas by building a sense of belonging, raise aspirations, increase skills and expertise and facilitate delivery of services.
- 3.5 A Community Asset Transfer Policy is complimentary to the Council's aspirations and plans for its localities and neighbourhood working.
- 3.6 Community Asset Transfer is not a 'property only' matter. It is an important approach to long term community support for the priorities of the Borough.
- 3.7 Bury Council already has a track record of supporting communities when and how it can and has a history of promoting self management agreements relating to of sports and allotment facilities.
- 3.8 A Community Asset Policy will serve to inform and guide the Councils support through its management of property assets. It also provides a structure for objectively considering applications, case by case, according to their own merits.

4.0 COMMUNITY ASSET TRANSFER POLICY

- 4.1 The proposed Asset Transfer Policy is included within Appendix 1 to this report.
- 4.2 An option to consider transfer of a property asset to the community can be prompted either by the Council identifying a property asset that it decides is surplus to its needs, or by a community or voluntary organisation approaching the Council.
- 4.3 The long term viability and benefits of each proposal for Community Asset Transfer will be evaluated against other options, e.g. disposal by way of open market sale, commercial lease, or alternative Council use.
- 4.4 The purpose of the policy is not to generate capital receipts, rather to recognise and support the contribution that community and voluntary organisations bring to neighbourhoods. The business case for an asset transfer must be demonstrated by the applicant to the satisfaction of the Strategic Leadership Team and Cabinet in monetary and sustainability terms.
- 4.5 Whoever makes the first approach, the applicant for Community Asset Transfer will be responsible for making the case for the transfer. The Council will assist where it can and will endeavour to take a fair, consistent and transparent approach to considering the case and responding.
- 4.6 Each Community Asset Transfer application will be considered on its own merits. The policy provides a structure to help voluntary and community organisations to develop its options and for the Council to respond to them.
- 4.7 It is useful to consider objective key tests of 'the organisation', 'the property' and of 'value for money' in advance of a Community Asset Transfer.

4.8 The Organisation Test: (to be demonstrated by the applicant)

- i. It is a legally constituted community group, charity, or not for profit organisation, with articles of association that define roles and responsibilities of company directors, trustees etc.
- ii. It understands and is willing and able to take legal responsibility of the property asset transferred, e.g. health and safety, running costs, maintenance and improvement plans.
- iii. It has identified risks (including health and safety) and has agreed and put in place mitigating actions.
- iv. It has understanding of costs, financial standing and an identified and adequate budget to meet its roles and responsibilities.
- v. There is sufficient alignment between the applicant and the Council's objectives and plans.
- vi. It has defined and working governance arrangements.
- vii. Its funding sources are reliable.
- viii. It is able to demonstrate a track record in its relevant area of expertise, where this is considered to be a prerequisite, or to have made a satisfactorily strong case of the organisation's competence where a track record does not already exist.
- ix. It has, or has access to, appropriate skills and capacity to safely deliver the services and to manage the property in the long term.
- x. It has a service level agreement with the Council, where appropriate.

4.9 The Property Test:

- i. There is no foreseeable Council need for the property and it has been declared surplus as a result.
- ii. There are no legal or property title impediments to the asset transfer.
- iii. Property value has been determined by the Council's Property and Asset Management Service for consideration in the Value for Money test.

4.10 The Value for Money Test:

- i. If the property and organisation tests are passed, the applicant will be requested to submit a business case setting out further details about its proposal. This should include a financial forecast and a risk register.
- ii. If the property asset transfer is to be at less than best consideration, the community organisation must demonstrate objectively the benefit or value of their proposals in monetary terms, e.g. achievement, promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area or direct savings such as protecting the value of Council assets in the long term.
- iii. Under EU law, governments and public bodies may not distort competition through their provision of state aid that puts commercial enterprises at a disadvantage. Applications for Community Asset transfers must be able to stand scrutiny of any question of State Aid.
- iv. The Council is under no obligation to transfer property assets to the community and decision are taken with knowledge of alternative disposal options.

5.0 BASIS OF THE PROPERTY ASSET TRANSFER

5.1 The individual circumstances of the application will determine the basis of property asset transfer. This will need to consider the following main items:

5.2 Property interest to be transferred

The basis of community asset transfer consistent with the level of transferred risk or cost retained or passed on by the Council. This can range from a;

- a. Short term lease, e.g. 5 years (with or without security of tenure).
- b. Short term followed by a further or a series of short term leases.
- c. Short term followed by longer term leases with mutual break clauses.
- d. Longer term lease, e.g. 6 to 99 years – with mutual break clauses.
- e. Lease or leases followed by transfer of the freehold.
- f. Freehold.

Self management agreements may also be considered, but these do not legally constitute as asset transfer and are more aligned to a service contract.

5.3 Subletting

Sub letting of assets by Community groups to commercial organisations may be acceptable if the income generated is key to the long term sustainability of the community asset transfer. However, the use would be subject to the Council's prior approval.

5.4 Use Restriction and claw back

Controls on future use should be considered to ensure that private 'profit' is not generated on the back of the transfer.

5.5 Indemnities on transfer

Where Community asset transfer rights and responsibilities are passed to the community organisation, risks to be identified and mitigations put in place, including risks of organisations failing to fulfil responsibilities. Such groups may be required to take out and maintain suitable indemnity insurance.

5.6 Other Material considerations for asset transfer

- Parties to the transaction
- Price / consideration
- Treatment of costs (legal and asset management, administration etc).

5.7 Ongoing Management

Where an Asset Transfer has been agreed based on a business case that commits to agreed 'outcomes' monitoring and enforcement agreements to be put in place.

6.0 PROCESS FOR COMMUNITY ASSET TRANSFER

6.1 The policy for Community Asset Transfer will be provided to interested groups. When community interest is to be considered as an alternative to service closure or outright open market sale, the application, preparation and consideration of business case and period allowed for completion will be time bound. The time periods allowed to be agreed at the beginning.

6.2 Applications for Community Asset transfer should be directed first to the Asset Management Team within the Department for Resource and Regulations Department. Where the community interest aligns with the objectives of a particular Council service objective, representatives of that service will be

asked to work with the community organisation to identify and develop the business case. Where appropriate they will also work with them after the asset transfer.

- 6.3 Applications for Community Asset Transfer will also be considered by representatives of Legal Services and Finance.
- 6.4 Decisions over applications for asset transfer are proposed be delegated to the Chief Executive, the Executive Director of Resource and Regulation and the Head of Property and Asset Management, in consultation with the Leader of the Council and the relevant portfolio holder.

List of Background Papers:-

Community Asset Transfer Policy, as contained within Appendix 1

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