

**TITLE OF REPORT: ASSET DISPOSAL STRATEGY AND COMMUNITY ASSET TRANSFER POLICY/Framework**

REPORT OF THE HEADS OF FINANCE PERFORMANCE AND ASSET MANAGEMENT AND POLICY AND COMMUNITY SERVICES

PORTFOLIO HOLDERS: COUNCILLORS TERRY HONE, JULIAN CUNNINGHAM AND TONY HUNTER

**1. SUMMARY**

- 1.1 To seek Cabinet agreement and adoption of the revised Asset Disposal Strategy and new Community Asset Transfer (CAT) Policy for the authority.
- 1.2 The management and disposal of the Council's assets must reflect the changing environment in which the authority operates, or will be required to operate in the future, and the strategy/policy as redrafted and developed here therefore include provision for new legislative implications regarding assets arising from the Localism Act to include Community Right to Bid.
- 1.3 Any approved asset transfers at less than market value are as a result of a local policy decision by the NHDC Cabinet on each case.

**2. RECOMMENDATIONS**

- 2.1 That Cabinet adopt the Council's revised Asset Disposal Strategy.
- 2.2 That Cabinet adopt the new Community Asset Transfer Policy.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To ensure that the Council has a relevant and up to date policy for the management of underused or vacant assets, and a formalised approach to those which may be subject to request from relevant and appropriate community groups to manage on behalf of the authority/the local community.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Not applicable.

**5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 The draft documents attached to this report have been discussed with and agreed by the relevant Portfolio Holders for asset management; policy and community engagement.
- 5.2 The draft Community Asset Transfer Policy attached has been subject to review by a member of the Locality.org.uk business team, and where appropriate to North Herts, their comments incorporated in the revised document attached.

## 6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision, and was included in the Forward Plan issued on 23<sup>rd</sup> December 2013.

## 7. BACKGROUND

- 7.1 The revised Asset Disposal Strategy and new Community Asset Transfer Policy are attached as appendices 1 and 2 to this report. It is necessary that they form two quite different but related documents in order to reflect the needs of the authority to manage its assets in the widest 'business' terms, and yet also maintain a suitably flexible policy to apply to any council assets for which suitable community groups may seek transfer.;

### Asset Disposal Strategy

- 7.2 The Asset Disposal Strategy attached as **Appendix 1** to this report has been updated to reflect the Council's latest requirements in regard to the effective management of, and where necessary, disposal of Council assets. The key change to this version is to recognise the existence and relevance of the Community Asset Transfer Policy as one means by which disposals may be progressed.

### Community Asset Transfer Policy & Framework

- 7.3 The CAT Policy attached as **Appendix 2** to this report is a new document for the authority created to set out the criteria under which transfer of assets to community groups may take place, how subsequent use and management will be reviewed, roles and responsibilities of the various parties etc. By its very nature, the Community Asset Transfer Policy cannot be prescriptive as each asset will require consideration on a case by case basis, but the document sets out the broad principles under which any transfer may be considered and progressed.
- 7.4 NHDC will consider an application from the community to acquire any asset owned by the authority, not just those listed as assets of community value.
- 7.5 The CAT Policy has been reviewed by the organisation "Locality", which is the leading nationwide network for community organisations; it was formed from an amalgamation of the original 'Federation of Residential Settlements' in 1920, later the British Association of Settlements and Social Action Centres in 1978 and the Development Trusts Association 1993. They have a specialist Asset Transfer Unit to promote and support community asset transfer. Their comments were that the draft document is a sound one, setting out principles and processes under which asset transfer could take place, but that:

"Community Asset Transfer and the Right to Bid are close relations, but they are underpinned by different rationales and operate under different conditions. CAT is a local policy decision about below market value transactions undertaken by mutual negotiation, whereas the Right to Bid is a statutory instrument with fixed definitions, processes and timescales.

Our recommendation is to consider CAT, the Right to Bid, etc. as 'tools in the toolbox' of community ownership. Start with a clear introduction as to the full suite of tools that are currently available to unleash the creativity, innovation and growth flowing from community asset ownership and management, of which CAT and the Right to Bid are the main two methods. Once you've got the definitions out of the way you can deal with each one separately"

They recommended review of the 'Enabling Community Asset Ownership and Management' a template produced by Locality for the London Borough of Lambeth; that policy concentrates more on social enterprise as a model for transfer, and use of compulsory purchase powers, the latter incorporated into our overlying Asset Management Strategy. Aside from these items, much of the context of the policy is aligned to the NHDC draft Community Asset Transfer Policy attached herewith.

In light of these comments, the revised CAT document therefore places more emphasis on the definitions of the different 'tools' by which transfer can be enabled, as early as possible in the document, then strengthens and clarifies the potential use of 'Community Right to Bid' where it may apply to a Council owned asset. The relevant link to community asset support, including potential funding sources, information on how to run a community hall etc. is also provided to enable community groups seeking any transfer to find relevant support more easily.

## **8. ISSUES**

### **Asset Disposal Strategy**

- 8.1 The existing Asset Disposal Strategy for the authority sets out the principles under which the authority will consider disposal of a vacant or unused asset of the authority. The revised strategy attached introduces another option, that of an under-used asset, given the Council's needs to ensure best value.
- 8.2 The disposal strategy now also makes specific reference to the proposed Community Asset Transfer policy as one potential means by which an asset may be disposed. However, this addition does not fundamentally change the ultimate decision making process, it only adds an additional route by which disposal may proceed and provides a framework within which this can be achieved.
- 8.3 It is the responsibility of each service to review all aspects of its service delivery regularly, and as part of that review, to identify any asset which is under used or surplus to their individual service delivery requirements.

### **Community Asset Transfer Policy (CAT)**

- 8.4 The CAT Policy includes a number of elements of good practice and learning from previous transfers. It is also intended, not only to inform the Council's approach to the transfer of an asset to a community group, but to act as a guide to any group wishing to take on an asset as to how the Council will consider and manage their application. It also seeks to clarify the responsibilities that will fall to the community group during the assessment of their request.
- 8.5 The requirements and expectations of the Council as set out in the CAT policy will be applied proportionally in each individual case. NHDC will take into account the size of both the community group and the proposed asset for transfer when considering the extent of the information required at each stage.
- 8.6 Where the property is listed on the Council's register of Assets of Community Value and a community group has triggered the full six months moratorium, the community group will have until the end of the six month period to make the "initial request (i.e. stage 1) as set out in the CAT Policy. Members are asked to note that, at present only three council owned assets have been listed as Assets of Community Value.

- 8.7 It is possible for more than one community group to express an interest in acquiring the same asset. Where Cabinet has not already made an 'in principle decision' (as detailed in paragraph 6.4 of the CAT policy) in relation to that asset, then the Council will consider proposals from as many community groups as express an interest in the property. Each group will be invited to submit an initial request and each option will be reported to Cabinet for consideration.

## **9. LEGAL IMPLICATIONS**

- 9.1 Cabinet has within its terms of reference to prepare and implement policies and strategies other than those reserved to full Council.
- 9.2 The proposed policies take into account the Authority's legal obligations with respect to property disposals. The policies note the legislative basis under which the Authority may dispose of land namely S123 of the Local Government Act 1972 and S25 of the Local Government Act 1988. They also acknowledge the need to be mindful of State Aid requirements in respect of any disposal at an undervalue.
- 9.3 Should the proposed policies be adopted then the legal implications relating to any individual disposal progressed pursuant to the policies would be assessed at the relevant time.
- 9.4 A sale, or lease of more than seven years, is regarded as a disposal.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Surplus or under-used assets may represent a drain on council resources and so the Council may decide to dispose of such assets by a variety of means, or introduce an alternative use. A disposal may be at market value, or less than this (subject to conditions outlined in 9.2 and 9.3 above), as determined by Cabinet.
- 10.2 The Contract Procurement Rules (Land Transactions) state that "no property or land owned or leased by the Council shall be disposed of to a third party until it has been established that no other directorates of the Council have a need for the property or land, and that the current service area confirms no other requirement for the site." This requirement has not changed.
- 10.3 Where a group has successfully registered a Council asset/site onto the list of 'Assets of community value' held by the authority and that asset subsequently comes up for disposal, the group will be informed of the decision to dispose and invited to consider preparing an appropriate bid utilising the Community Asset Transfer policy. The decision to dispose will also be publicised in the local area to allow any other interested parties to come forward with a bid. Alternatively a community group may approach the Council directly regarding a Council owned asset, even if it has not been registered as an Asset of Community Value. However, ultimately the decision on who to dispose to (or whether to dispose at all) remains with the Authority.

## **11. RISK IMPLICATIONS**

- 11.1 Relevant risks relating to individual assets are identified by service managers and managed on the Council's general risk register. The manner in which risks are managed for assets transferred to community organisations is outlined in the Community Asset Transfer Policy/framework.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 The Asset Management Disposal Strategy and Community Asset Transfer Policy/framework, as attached, have been developed to ensure equalities implications can be addressed, as necessary, on a case by case basis. Any transfer or disposal of a Council asset will require completion of an equality analysis due to the value/significance, but each will be completed and form background evidence to any request for decision to dispose/transfer as made to the Council's Cabinet.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section in Paragraph 12 above.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no direct additional HR implications arising from the adoption of these documents, albeit each disposal or transfer will be considered on a case by case basis and relevant implications addressed as part of that individual review. This is likely to include the staff resourcing implications for Officers dealing with a disposal request.

## **15. APPENDICES**

- 15.1 Appendix 1 - Asset Management Disposal Strategy.
- 15.3 Appendix 2 – Community Asset Transfer Policy.

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**17. BACKGROUND PAPERS**

None.