

Committee Name and Date of Committee Meeting

Cabinet – 21 October 2019

Report Title

Update to the Community Asset Transfer Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

The purpose of this report is to seek approval from Cabinet to update the existing Council policy on the Community Asset Transfer process and adopt the revised policy together with a suite of supporting documents.

Recommendations

1. That the revised Community Asset Transfer Policy documents appended to this report be approved and adopted.

List of Appendices Included

- Appendix 1 Equalities Screening Appendix
- Appendix 2 Updated Community Asset Transfer Policy
- Appendix 3 Community Asset Transfer Flowchart
- Appendix 4 Community Asset Transfer (Standard Heads of Terms)
- Appendix 5 Evaluation and Scoring Matrix

Background Papers

No

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Overview and Scrutiny Management Board – 16 October 2019

Council Approval Required

No

Exempt from the Press and Public

No

Update to the Community Asset Transfer PolicyError! Reference source not found.

1. Background

- 1.1 The Localism Act (2011) introduced the concept of the Community Asset Transfer (CAT) process for Local Government and the Council's existing policy on this legislation was formally adopted following approval by Cabinet on 20 July 2011.
- 1.2 Since the existing policy was formally adopted the Council have granted a number of Community Asset Transfers across the Borough, many of which have proved to be very successful in empowering community organisations to deliver their own solutions to meet local needs and demands for services.
- 1.3 However, the interest in the CAT process has grown significantly in recent years, more often with multiple community groups expressing an interest in one single asset, and as such the Council now needs to have a more robust policy in place to determine how CAT applications should be assessed.

2. Key Issues

- 2.1 CAT applications are being received from multiple community groups interested in a particular asset following the standard marketing exercise for expressions of interest. As such the Council now needs to have a policy that better supports the decision making process for the granting of CAT agreements.
- 2.2 The Council needs to be more accountable in granting of any CAT agreements and all applications need to be assessed on the same basis to ensure that a consistent decision making process is applied.
- 2.3 Should the Council ever be challenged in respect of a decision to grant a CAT to a particular community group/body, if a clear, transparent and robust process is used to determine all such applications, then the Council will be able to demonstrate the rationale behind their decision making process.
- 2.4 The existing CAT policy has the requirement that all agreements shall contain a break option in favour of the Council, in the unlikely but possible event that the asset transferred is required for wider community development directly (the asset or surrounding site itself) or indirectly (for the benefit of a capital receipt). However, many community groups now rely on external funding provision for the delivery of their services and are requesting that the break clause provision is removed from their agreement to meet their funder's requirements. Funders are obviously reluctant to release grant monies for a CAT project if the agreement can be terminated by the landlord. In these circumstances, where the Council do accept that it is appropriate to remove the break clause, then further approval is required from Cabinet as the proposed agreement is not in line with the current adopted policy. It is now proposed in the updated policy, that in these circumstances, the decision to agree to any removal of the Council's break clause provision shall fall under the "Property Officer's" delegated powers under paragraph 41.5.12 of the Council's Financial and Procurement Procedure Rules.

- 2.5 It is also proposed in the updated CAT policy that there will now be a Joint Working Agreement (JWA) that will be supplemental to any CAT agreement granted. The JWA will be agreed between the parties and will clearly define and document what is expected (from both the Council and organisation) in terms of the services to be delivered from the building (or land) and to provide further surety that the services continue to meet the needs of the local community and the Council's corporate priorities. There will also be a break clause provision, in favour of the Council, that if the terms and conditions of the JWA are not being adhered to then the Council have the option to terminate the CAT agreement.

3. Options considered and recommended proposal

3.1 Option (1)

To continue with the existing policy currently in place to determine all applications for CAT leases. This is not the recommended option due to the number of CAT applications now being received and the need to have a clear justified decision making process in place.

3.2 Option (2)

To update the existing CAT policy in accordance with the proposals put forward in this report to make the application process/decision to award a CAT lease more accountable, robust and transparent. This is the recommended option.

- 3.2 The recommendation of this report is that Option (2) above is approved and that the updated policy is now used to determine all CAT applications. A copy of the updated CAT policy can be seen at Appendix (2) of this report, together with all the supporting documents – Appendix (3) CAT Flowchart, Appendix (4) CAT Standard Heads of Terms and Appendix (5) CAT Evaluation and Scoring Matrix.

4. Consultation on proposal

- 4.1 The draft policy proposals put forward in this report were circulated to all Directorates/Heads of Service for comments in May 2019. All responses received, where appropriate, have now been incorporated into the updated policy.
- 4.2 The Cabinet Member for Jobs and the Local Economy has also been consulted on the proposals and supports the proposed update to the existing policy.
- 4.3 During the drafting of the update Voluntary Action Rotherham has been fully consulted and fully supported the proposed update.

5. Timetable and Accountability for Implementing this Decision

- 5.1 Should the proposals put forward in this report be approved by Cabinet, then the policy update shall be implemented following the call in period.

6. Financial and Procurement Advice and Implications

- 6.1 The transfer of Council assets under the CAT policy enables the Council to make revenue savings and removes from the Council the financial burden of future capital expenditure commitments in respect of the transferred buildings. In addition, voluntary and community groups are able to access capital and revenue grant funding to enhance the existing assets and to support the delivery of the services at a community level, which generally local authorities are ineligible to bid for.
- 6.2 By transferring assets under the CAT policy there is an opportunity cost to the Council through the loss of a potential capital receipt, and the loss of revenue income generated by the asset. Where possible the Council will protect its future interests through the insertion of a break clause in the CAT agreement, however, as discussed in 2.4 above, increasingly funders are requesting that such clauses are excluded from the agreement.

7. Legal Advice and Implications

- 7.1 The revised policy has been drafted to comply with relevant legislation and accordingly there are no legal implications arising from this report.
- 7.2 The inclusion of a delegation regarding future applications to remove the break clause is to be welcomed by Legal Services as the need to obtain a Cabinet authority under the present policy has caused significant delays to tenants and put their funding applications at risk.

8. Human Resources Advice and Implications

- 8.1 There are no Human Resources implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 There are no such implications arising from this report.

10. Equalities and Human Rights Advice and Implications

- 10.1 There are no such implications arising from this report.

11. Implications for Partners

- 11.1 Public sector partners, where appropriate, will be fully consulted on any proposed Community Asset Transfers.

12. Risks and Mitigation

- 12.1 Upon the adoption of the updated policy the Council will be able to clearly demonstrate their justification in relation to the approval/or refusal of any CAT agreement.

- 12.2 The introduction of a JWA (in addition to the actual CAT agreement) will enable the Council to keep a much tighter control on the delivery of services from the asset and ensure that the continued provision is in line with the intended agreement.

13. Accountable Officers

Paul Woodcock – Strategic Director Regeneration and Environment
Simon Moss – Assistant Director of Planning Regeneration and Transport
Paul Smith - Head of Asset Management
Lindsay Johnson - Strategic Asset Manager

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	07/10/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	02/10/19
Head of Legal Services (Monitoring Officer)	Named officer	01/10/19

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