

Initial Draft Asset Transfer Policy Principles

Introduction

This document sets out the recommended principles that the Council should adopt to provide clarity as to how Rotherham Metropolitan Borough Council will approach the transfer of community buildings or land to the Third Sector (voluntary and community organisations) and other Not For Profit Organisations.

National Policy Context

The 2006 *Local Government White Paper* confirmed the Government's intention to increase opportunities for community asset ownership and management, and promoted asset transfer as part of a local authority's 'place-shaping' role. The Secretary of State for Communities commissioned Barry Quirk, Chief Executive of LB Lewisham to carry out a review into the barriers preventing community asset transfer.

The 'Quirk Reviews' findings *Making Assets Work* were published in May 2007. All the Review's recommendations were accepted by the Government and published a week later as an implementation plan in *Opening the transfer window: the government's response to the Quirk Review*. The Government's plan for taking the review forward included a demonstration programme with local authorities and their partners, a guide to managing risks in asset transfer and a series of regional awareness-raising workshops.

The Quirk Review found that a careful increase in the community's stake in an asset can bring a wide range of additional benefits for the community, the organisation receiving the asset and the local authority facilitating the transfer. The benefits of community ownership and management can outweigh risks and opportunity costs.

The Government's Empowerment Action Plan published in 2007 includes actions relating to the transfer of assets and to a programme of support for community anchors, including the availability of further funding to support the development of anchors.

In July 2008 CLG White Paper "Communities in Control: real people real power" confirmed ongoing support for the Quirk review, announced the establishment of a national Asset Transfer Unit, extended the Advancing Assets programme by a further year and announced a £70m Communitybuilders fund. The origins of this agenda go back to the ODPM's 2003 *Communities Plan (Sustainable Communities: Building for the future)*. This acknowledged that sustainability is only possible where local communities play a leading role in determining their own future development.

This position has been further reinforced with the recent launch of the Decentralisation and Localism Bill that was published on the 13th December 2010.

The Legal position

Section 123 of the Local Government Act 1972 imposes a legal obligation not to dispose of land (other than tenancies of seven years or under) for consideration "less than the best that can reasonably be obtained" – unless the Secretary of State gives consent to such a disposal at undervalue.

The Courts have taken a restrictive interpretation of "consideration", effectively requiring it to have commercial value of some form to the Council in question.

The General Disposal Consent 2003 relaxes the situation by giving blanket general consent of the Secretary of State to under value disposals, subject to certain pre-conditions clearly linked back to the well-being powers in the Local Government Act 2000 where;

- (a) The Council "considers that the purpose for which the land is to be disposed is likely to contribute to the achievement" of any or all of the promotion or improvement of the economic, social or environmental well-being of the whole or any part of its area, or of all or any persons resident or present in its area"
- (b) The undervalue is no more than £2m being the difference in the disposal value and Market Value or the difference in the capitalised rental value and Market Rent Value in the case of leases granted.

The consent gives authorities autonomy to carry out their statutory duties and functions and to fulfil such other objectives as they consider to be necessary or desirable but authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. None of the above removes the Council's discretion in deciding whether or not to dispose of an asset in the first place.

The Basis of Asset Transfer

Asset transfer is considered to relate to freehold and/or leasehold arrangements at less than best consideration. Asset transfer may take a number of legal forms. At one extreme, a transfer of the Council's freehold interest in land or property would mean the entire ownership of the asset would pass from the Council to the community based group. However, restrictions (called „covenants“) will ensure the property remains available to local people to use and prevent it being sold for development.

A lease will give a community based group the exclusive right to use the asset for the duration of the lease. A lease can run for any period - commonly from a few months, up to 125 years. At the end of the lease the asset will return to Council control. The Council will write in to such leases an appropriate clause under which the asset would revert to the Council, for example: in the case of bankruptcy; in the case of corruption;

if the anticipated benefits of transfer are not realised or if the organisation wishes to develop and move into bigger premises. In addition, an appropriate review period will be written into any community asset transfer contract.

The Council will discuss with community based groups what sort of transfer will be most suitable to meet the needs and expectations of the groups and local people.

The default position should be that the Council should seek to retain the freehold interest of the property and grant a lease to the community based group, though the Council should consider other options if it is in the best interest of local people.

Criteria for considering requests for Community Asset Transfer

The asset transfer decision involves the assessment of a number of criteria including:

- Benefits to respective parties eg Council, Community, Third Sector generated by the transfer of the asset to the community
- Raising of capital receipts for future investment in direct service provision.
- Loss of any existing income
- Potential loss of opportunity costs arising from transfer
- Retention of assets for direct service delivery

The Asset Subject To Transfer

The asset that is capable of transfer shall be defined as follows;

- An asset is either land or buildings or both in the ownership of the Council. A policy should not specifically include or exclude any asset from potential transfer to a community group, allowing each case to be considered on its own merits and in the context of the Councils existing disposal policy
- An asset that is not currently needed or identified for future investment value or identified within the Capital Receipts programme.
- An asset that is not currently required for service delivery, which could best be provided directly by the Council rather than through the community, Third Sector or other Not For Profit Organisations.
- The transfer will be an asset that will assist in delivering the core purpose and corporate outcomes of the Council.
- The asset is fit for purpose and would not impose an unreasonable liability to the Third Sector or Not For Profit Organisation or the Council
- That the transfer or management of an asset would not be contrary to any existing obligation placed on the Council

The Applicant

The applicant should be a third sector voluntary, community or not for profit organisation - i.e. it must be a legal entity which:-

- Is non-governmental - not part of the statutory sector;
- Is non-profit distributing - it must reinvest any surpluses to further its social aims / community benefits;
- Has well defined community benefit objectives
- Is appropriately constituted, for example, a registered charity, a community interest company or a charitable incorporated organisation, a not for profit company; a co-operative.
- Holds a constitution that can allow for the management/ownership of buildings and or provision of services.
- Can demonstrate that it understands health and safety issues and compliance with legislation/statutory requirements arising from ownership or management of the asset and or running a service.
- Can demonstrate good governance by operating through open and accountable co-operative processes, with adequate monitoring, evaluation and financial management systems;
- Can demonstrate management experience and/or expertise
- Can demonstrate how they will address any capacity building requirements within their organisation.
- Can demonstrate that the organisation is sustainable.
- Can provide copies of the accounts of the organisation.
- Can demonstrate a track record of delivering services or property management
- Can demonstrate that the organisation has a clear purpose and understanding of the activities it wishes to deliver.
- Can demonstrate that it has the skills and capacity within, or available to, its managing body to effectively deliver services and manage the asset;
- Can embrace diversity and work to improve community cohesion and reduce inequalities
- Can engaged in economic, environmental or social regeneration in Rotherham or be providing a service of community benefit in line with the Councils core purposes

Proposed use

The applicant should be able to provide a clear and unambiguous use for the asset and be able to demonstrate that;

- The proposed use will assist in the delivery of the Councils core purpose and corporate outcomes.
- The proposed use will ensure extensive reach into the community and will be open to all.

- The proposed use will maximise opportunities to ensure sustainability, for example, through income generation, social enterprise and the hiring of space and facilities
- There is an evidenced need and demand for the activities being proposed within the local community
- The applicant has established how much space it requires to deliver its proposals, and how they will make good use of such facilities.
- The applicant will need to demonstrate how the premises will be managed on a day to day basis, and take account of legislation affecting occupation of premises

Jonathan R Marriott, Principal Estates Surveyor, Asset Management