

**Report of the Director**

**COMMUNITY ASSET TRANSFER AND SALE OF LAND POLICIES**

**1 Purpose of report**

This report covers two aspects: a draft policy to deal with requests for the potential transfer of property assets to the community; and a draft policy for the sale of small areas of council owned land to owners of adjacent property.

**2 Executive summary**

The council receives requests from parish councils and other community organisations wishing to have council owned property transferred to them for continued use by the community. Requests are also received from owners of adjoining property wishing to purchase small areas of land for use with their existing property. The council does not currently have policies to deal with these approaches. The adoption of robust policies will assist both officers in dealing with these requests and members in making decisions.

**3 Appendices**

Appendix 1 contains the draft policy for the transfer of assets to the community.

Appendix 2 contains the draft policy for the sale of land.

**4 Proposed action:**

**The committee is invited to RESOLVE to:**

- 4.1 Agree the policy and procedure for applications for the transfer of assets to the community, to take immediate effect;**
- 4.2 Agree the policy and procedure for applications for the sale of land, to take immediate effect.**

**5 Background**

- 5.1 The council has received requests, both recent and historic, from parish councils and other community organisations wishing to take responsibility and ownership for council owned land and/or buildings within their area.
- 5.2 The council also receives regular requests to purchase small areas of land from owners of adjoining property who wish to extend their gardens, erect outbuildings or extend their houses.
- 5.3 There is no current adopted policy to assist decision making either in connection with requests to transfer assets, or requests to purchase

land. Previously, each request has been dealt with individually.

## **6 Discussion**

- 6.1 Each request for the transfer of an asset to the community, or to purchase land from the council does, to some extent, have to be considered on its own individual merits. However, it is necessary to have an adopted policy relevant to each area to inform objective decision making based on agreed principles and criteria. The guidance provided by policy will help to clarify the process leading up to the decision and ensure more efficient use of resources that were previously spent considering each request individually.

### **Community asset transfer policy:**

- 6.2 This policy will apply to property assets which are surplus to council requirements, but are capable of continued sustainable and beneficial use to the community. Formally constituted community based or voluntary not-for-profit organisations will be able to make a bid to the council to have land or property assets transferred to them for a designated purpose.
- 6.3 The council has the power to transfer land in accordance with the Local Government Act 1972, and the concept of Community Asset Transfer (CAT) was introduced in the Localism Act 2011. This allowed councils to transfer land or buildings to a community based organisation. Such transfer is not a legal requirement, but is rather a voluntary process at the discretion of the council.
- 6.4 The council, as the holder of public assets, must satisfy itself that the transfer is beneficial to the community, reasonable and justified. It must also consider the implications of making that transfer for itself, the community organisation, and the wider community.
- 6.5 The council must therefore ensure that due diligence is carried out to ensure that the organisation is properly constituted, has sufficient funds - or plans to raise funds - which will maintain the asset, and will not use the asset for a purpose which does not provide the expected community benefit.
- 6.6 If the decision is made to transfer the asset, the recommendation set out in the policy is to make that transfer the subject of a long lease rather than a freehold transfer, at peppercorn rent level. This allows the council to retain control over the asset's use and future. Whilst the council may dispose of an interest in land and property at an undervalue of up to £2m below market value where that transfer will promote improvement of the economic, social or environmental wellbeing of an area, the proposal is that a prudent approach is taken to the transfer of any asset.

### **Sale of land policy:**

- 6.7 The council regularly receives requests for sale of small areas of council land adjacent to private property. This may be because the householder wishes to extend their garden or their house. Sometimes it is because they are concerned that the land will be developed and they wish to put in place a "bund" between them and the new development.
- 6.8 The implications of any such requests need to be considered carefully.

The potential purchaser may wish to make financial gain from the purchase, and this needs to be properly calculated in any sale price. Purchasers often expect that they will be able to obtain council land for a low price but, in order to demonstrate due diligence, a valuation will be required and the land would need to be sold for a market value. The purchaser would also be expected to pay the council's legal fees.

- 6.9 A number of other considerations are set out in the policy (section 4) which must all be taken into account before a decision is made, and appropriate conditions of sale (section 5) would be applied. If the land was designated for another purpose there would be planning implications for a change of use to garden or residential purposes.

## **7 Legal powers**

The council has full power to manage its property assets under the incidental powers in section 111 of the Local Government Act 1972. Furthermore the council has all the powers of an individual under section 1 of the Localism Act 2011. Accordingly it has full power to carry out the proposed actions.

## **8 Financial and value for money implications**

Financial considerations are set out above. In terms of the sale of land, there may be a short term minimal capital gain for the council, but this has to be balanced against any longer term financial or community implications (eg. additional costs for mowing uneven areas; neighbour objections; maintenance and appearance). Community asset transfer has the potential to reduce the council's maintenance and other liabilities but, without due diligence, may result in additional costs in future.

## **9 Risk analysis**

The risks associated with the adoption of this policy are outlined above, but mitigation has been put in place within the draft policies. By ensuring that these points are taken into consideration the risk is reduced.

## **10 Implications for resources, stronger and safer communities, and equalities**

There are no implications arising from this report. Any transfer or sale of land would need to take into consideration the level of resource required and, depending on the purpose or location, an impact assessment may be required.

## **11 Author and contact officer**

Bridget Gamble, Director

## **12 Consultees**

Senior Management Team  
Principal Accountancy Manager  
Principal Property and Facilities Manager  
Messrs Underwoods LLP

## **13 Background papers**

There are no background papers to this report.

## 1 PURPOSE

- 1.1 This paper outlines the Borough Council of Wellingborough's (BCW) policy on the transfer of council assets to community organisations.

## 2 DEFINITIONS

- 2.1 **Community assets (CA)** - Land and buildings that are surplus to council requirements and capable of generating an income that can be reinvested into activities that benefit the community; or capable of sustainable, beneficial use to the community in other specific ways.
- 2.2 **Community organisation/third sector organisation (TSOs)** - A formally constituted group based within the borough, delivering - or capable of delivering - services or functions of benefit to the local community, be this area based, around a particular social group, or other particular community interest.
- 2.3 **Community asset transfer (CAT)** - The mechanism used to achieve the change in management and/or ownership of land or buildings from local authorities to community and voluntary sector groups, community enterprises, or social enterprises.
- 2.4 **Community asset ownership (CAO)** – Community based organisations owning and managing land and buildings transferred from a statutory body.
- 2.5 **Forms of CAT:**
- management agreement
  - licence to occupy
  - short or long lease
  - freehold transfer

## 3 CONSIDERATIONS

- 3.1 The decision on which type of transfer is appropriate will be determined by an assessment of the business case supplied by the TSO and which option is best suited to meeting the objectives of the transfer. It is considered that in most cases the council's long term interests will be best served by long lease disposals rather than freehold transfer, although there may be exceptional circumstances which make freehold sale appropriate.
- 3.2 For most transfers, where grants or loans are required to develop the asset, the length of tenure will need to be long enough to secure external investment. Therefore, community asset transfer is usually taken to mean a long lease, of at least 25 years, or, exceptionally, a freehold transfer.

- 3.3 Transfer is likely to be at market value; however CAT may exceptionally involve a transfer at less than market value, either at a reduced cost, or free of charge. The level of subsidy provided by the council will be determined by the social, economic or environmental benefits generated by the transfer and demonstrated in a robust business case provided by the CA or TSO. In some cases it can be at less than best consideration or give community led organisations 'first refusal' on a commercially based disposal. This could be achieved by protecting the asset from the open market for an agreed period - which may be particularly appropriate for social enterprises and development trusts.
- 3.4 Before making any decision in relation to a CAT the council will ensure that due diligence has been carried out in respect of the following:
- the financial standing of the TSO;
  - the robustness of the financial forecasts in their business case;
  - the governance of the TSO;
  - future liabilities for the council;
  - state aid implications.

#### **4 STATEMENT OF COMMITMENT:**

The Borough Council of Wellingborough (BCW) will consider Community Asset Transfer ('CAT') applications which will bring benefits to our communities and contribute towards the council's aims and objectives.

We recognise that CAT can be a valuable part of supporting and sustaining the borough and, where properties have been identified as surplus to requirements or suitable for community management, council assets may be considered for management by the people who regularly use them.

Any CAT would result in a long-term partnership that meets the council's criteria, in order to create stronger, more cohesive and more sustainable communities.

We will have a transparent process for CAT and will adopt an agreed method of assessing all requests for CAT.

The council will consider the disposal of groups of properties on the same basis as individual properties.

#### **5 AIMS OF COMMUNITY ASSET TRANSFER**

- 5.1 The council's built assets include land, buildings and other structures used for a variety of different social, community and public purposes as well as for the council's own operations. For some of these assets community management and ownership could deliver improved:
- benefits to the local community
  - benefits to the council and other public sector service providers

- benefits for the organisation taking ownership.

5.2 A CAT is regarded as a potential tool in the flexible management of the council's assets to maximise their contribution towards achieving the council's priorities.

5.3 A CAT may balance the requirements of the council to maximise the monetary value of disposal of assets against the added value of asset transfer to a community organisation. Community-led ownership offers additional opportunities to secure resources within a local area and to empower local citizens and communities. An asset can also provide a TSO with greater financial viability and reduce its dependency on grants. The asset will enable it to apply for external funding that is not available to the council, or even to secure loan finance on the value of the asset.

## 6. APPLICATION PROCEDURE

Any community organisation interested in applying for an asset transfer will be provided with the following documentation:

- "Guide to Community Asset Transfer"
- CAT application form and CAT guidance notes
- A copy of this policy which includes the CAT Assessment Criteria
- Any relevant information on the property that the council holds.

It is essential that every applicant has completed the application form and provided all the relevant documentation and, in particular, a viable business plan demonstrating their capability of sustaining the asset.

Once the application has been submitted, the steps outlined below will be followed. Every application will be dealt with objectively and transparently in accordance with the policy and guidance supplied.

Applicants are likely to benefit from carrying out research on asset transfers and demonstrating this. Some useful sources include [www.communitymatters.org.uk](http://www.communitymatters.org.uk)

## 7. ASSESSMENT CRITERIA SUMMARY

	POTENTIAL FOR COMMUNITY ASSET TRANSFER	CONDITIONAL COMMUNITY ASSET TRANSFER – If significant community benefit demonstrated	NOT SUITABLE FOR COMMUNITY ASSET TRANSFER
Asset value	Less than £200,000 (small)	£200,000 to £1,000,000 (medium)	Greater than £1,000,000 (large)
Length of occupation	20+ years	5-20 years	Less than 5 years
Asset holding	Operational	Operational	Non operational
Community	Minimal Impact	Manageable Impact	Significant impact
Sustainability/ stability	Demonstrated ability to manage property and plan for future; history of stability/capability	Demonstrated ability to manage service, property and plan for future, history of stability/capability	Inability to demonstrate stability/ capability or record of failure

Governance	Settled legal entity with proven ability to manage change	Settled legal entity with proven ability to manage change	No record or poor history
Legal structure	Constituted Group Registered Charity Registered Company Or seeking formalisation	Constituted Group Registered Charity Registered Company Or seeking formalisation	No form of structure No identifiable accountability
Financial standing	Established record of financial probity, ability to meet running costs, long term planning; business plan	Established record of financial probity, ability to meet running costs, long term planning; business plan	No record or poor financial history, business modelling or financial planning
Community benefit	Established record of community benefit; identifiable and measureable community benefits	Established record of community benefit; identifiable and measureable community benefits	No record or poor outputs, community benefits not identified
Benefits of CAT	Strong business case to evidence anticipated benefit from CAT	Strong business case to evidence anticipated benefit from CAT	No evidence
Maintenance	Proven record of managing maintenance issues; evidence of ability to manage on-going maintenance of building	Proven record of managing maintenance issues; evidence of ability to manage on-going maintenance of building	No record or poor history; unable to demonstrate ability
Commitment	<b>Agreement to restrict use to community activities in line with stated intent and guaranteed by covenant</b>	<b>Agreement to restrict use to community activities in line with stated intent and guaranteed by covenant</b>	<b>No agreement</b>

## 8. APPLICATION REQUIREMENTS:

The application will be assessed using the following criteria:

- provide evidence of an up-to-date governing document;
- have clear roles and responsibilities for management committee members as directors and/or charity trustees;
- elect officers, and hold elections/ regular meetings in accordance with the governing document;
- comply with Charity Commission and Companies House requirements;
- manage conflicts of interest;
- understand its community and its current needs;
- monitor the quality and relevance of its services, seek feedback, and ensure that its services are fully accessible and appropriate to its community;
- provide regular financial updates for the organisation and ensure its trustees/directors/management committee members understand their

- legal obligations;
- produce annual accounts, appropriately examined or audited;
  - have written policies covering payment of trustees/directors/management committee members and volunteers;
  - have a Reserves Policy, and procedures for paying/re-claiming the correct amounts of tax, NI and VAT;
  - operate a consistent charging and lettings policy that balances the needs of the organisation with the needs of local groups;
  - have a separate trading company with a clear legal relationship, where applicable;
  - have a clear recruitment policy and written procedures for the recruitment, induction and support of employees and volunteers;
  - have contracts of employment and written terms and conditions for all staff;
  - comply with relevant equal opportunities legislation in its work/service delivery, and recruitment/employment of staff;
  - have the correct licences, permissions and insurance cover, where applicable;
  - comply with good health and safety practice and legislation;
  - comply with The Children's Act and The Safeguarding Vulnerable Groups Act 2006.

## **9. Frequently asked questions**

### **9.1 Which organisations can be considered for CAT?**

TSOs or organisations that are not for private profit:

- unincorporated charitable organisation
- company limited by guarantee with charitable status
- Community Interest Company (CIC) limited by guarantee
- community benefit Industrial & Provident Society with an asset lock
- CIC limited by shares

CAT recipients can be of any size and need to:

- generate social, economic or environmental benefits
- directly benefit the people of the borough
- benefit as wide and diverse a range of local people as possible

Privately owned or commercial organisations can only be considered if their main aim is to deliver social, economic or environmental benefits, and if it has been established that there are no state aid implications.

National organisations whose remit is regional or nationwide are not normally considered for CAT.

### **9.2 For how long will leases be granted?**

We will carefully consider the specific needs of the TSO, the condition of the

asset and the requirements of potential funders or lenders. We will base the length of the lease term on the needs that are clearly supported by the TSO's business plan, and on the TSO's capacity to manage the asset. In certain cases we may offer a phased transfer, depending on the TSO's resources.

We will be as flexible as possible when designing lease clauses, so that maximum benefit is achieved for both the TSO and the council. This will enable the asset to be used imaginatively, e.g. through the ability to sub-let and through flexible user clauses.

Once granted, leases may be extended or restructured at a future stage, to meet the TSO's changed activities or circumstances, or to meet the requirements of potential funders or lenders.

Where services are being transferred with an asset, Leases will be accompanied by a Service Agreement that will secure the longer term benefits of the CAT. This will set out the agreed minimum standards, opening hours and activities, and how these will be measured and monitored. It will also ensure that the TSO meets all necessary requirements to achieve optimum community benefit and use of the asset. Note: dependent on the circumstances of the CAT, if services are to be transferred with an asset a tender process may be required to meet procurement regulations; this is likely to affect the decision on the CAT if the asset transfer and the service provided are dependent on each other.

Where specific services are not being transferred with the asset, but a sustainable, beneficial community use has been proven in the business case, the council may, with reasonable notice, ask an organisation that has made a successful CAT bid to outline the benefits of the transfer, and how it contributes to the achievement of its stated aims, to a committee or officers of the council.

Leases longer than 7 years will normally only be granted to organisations that have an 'asset lock' and will contain clauses that prevent the asset being assigned or sold on for financial gain and the loss of the agreed benefits.

Leases will contain suitable clauses to ensure the return of the asset to the council if the terms of the service agreement are not met, or in the case of dissolution, insolvency or corruption.

### **9.3 What should the business case for CAT contain?**

- Full details of the identified needs that will be met by the CAT
- Clear evidence of the capacity and experience of the TSO to manage, maintain and develop the asset by meeting the application requirements outlined above.
- Detailed evidence that the CAT is financially sustainable over the life of the business plan and will not incur future financial liabilities for the council
- Details of any financial support secured from or pledged by funders and lenders; the council will assist by making relevant property information and data available.

- Details of the anticipated benefits that the CAT will produce and how these will be measured.
- Details of the type of CAT and lease terms sought.
- A robust risk assessment of the CAT and details of alternative arrangements in the event that the CAT proves unrealistic or becomes unsustainable.

For more information about the CAT Policy or to make enquiries about whether Community Asset Transfer could be appropriate for your organisation please contact:

Property and Projects Team  
Borough Council Wellingborough,  
Swanspool House,  
Doddington Road,  
Wellingborough,  
NN8 1BP

Telephone: 01933 XXX XXX

Email: [XXXXXXXX@wellingborough.gov.uk](mailto:XXXXXXXX@wellingborough.gov.uk)

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## **BOROUGH COUNCIL OF WELLINGBOROUGH**

### **POLICY ON SALE OF SMALL PARCELS OF COUNCIL-OWNED LAND FOR GARDEN USE**

#### **1. Introduction**

- a. The council receives many enquiries, particularly from owner-occupiers, to purchase land adjacent to their properties.
- b. The purpose of this policy is to explain how and why we handle land sales in a particular way, and to guide prospective purchasers through that process.
- c. This policy only relates to the sale of land which is immediately adjacent to the purchaser's property. Enquiries about any other transactions need to go direct to our agent.

#### **2. Background**

- a. The sale of council land is often controversial because we need to strike a balance between amenity value, access, commercial value, maintenance costs, integrity of the built environment, and its potential for future community needs.
- b. By adopting the criteria and conditions set out in this policy we aim to protect the interests of the council, the community and the prospective purchaser.

#### **3. Statutory duty**

- a. The council is obliged to seek 'best consideration' when it disposes of any asset, (as required by Section 123 of the Local Government Act 1972).
- b. This usually means that the council is under a statutory duty to obtain the best price reasonably obtainable for any property, or piece of land, which it sells.
- c. The council also has a separate responsibility to consider any objections to the sale of land, especially if it borders two or more properties.

#### **4. Criteria for sale of land**

Before the council agrees to sell the land, it will need to be satisfied that the sale would meet the criteria outlined below:

- a. the proposed change of use would not adversely affect the adjoining area or be considered an unsafe use;
- b. public rights of way would not be affected;
- c. the land is not subject to restrictive covenants that affect its change of use;
- d. there are no detrimental council or statutory utilities within the land;
- e. the land is not subject to adopted highway rights;
- f. the council has no foreseeable use for the land;
- g. the sale would not prevent access to other council land;

- h. the sale would not result in high maintenance costs for the council for any adjacent retained landscaped areas;
- i. the land does not provide for a line of sight for vehicles, footpaths and/or other rights of way;
- j. the purchaser has no outstanding debts with the council;
- k. the land does not form any part of a designated open space.

## **5. Conditions of sale**

The following restrictions would be a condition of the sale, which would be imposed through the use of covenants and written agreements depending on the purchaser's proposed use of the land. All land will be sold at market value in line with an independent valuation.

- a. *If the land is to be kept as open land (for garden purposes only):*
  - i. no fences, barriers or other structures erected without the prior written consent of both the council's property and planning services;
  - ii. not be used for the storage of materials;
  - iii. grass areas to be kept clear of rubbish and cut regularly;
  - iv. trees, hedges and shrubs pruned, not allowing them to become a nuisance to neighbours or others;
  - v. the cover of vegetation maintained in perpetuity, with failing and dead plants replaced at the earliest opportunity;
  - vi. tree planting or severe pruning/felling only undertaken with the written permission of the council;
  - vii. the erection of a building structure prohibited. Note: should the owner later wish to erect a building, then subject to meeting the criteria set out above, the council will require a further payment to reflect the open market value of the land including the proposed development, as determined by a council valuation, after planning consent has been given, or a proposal that does not require planning consent has been agreed
  - viii. use for garden purposes only.
- b. *If the land is to be used to park / store vehicles, trailers, boats and / or access to the current garden.*
  - i. conditions i to vii above will apply;
  - ii. Highway Authority consent for vehicular access to be obtained, subject to the provision of approved dropped kerbs and appropriate hard standing;
  - iii. Prior written approval must be obtained from the council that the land may be used to park or store vehicles etc.
- c. *If the land is to be used to erect a building (e.g. extension):*
  - i. the land will be sold at its open market value, taking into account the value added by the proposed development, once planning consent has been given; or a proposal that does not require planning consent (i.e. permitted development) has been agreed.

## **6. Procedure for Purchase**

- a. The prospective purchaser will usually have obtained this policy following a telephone call or via the council's website.

- b. Once you have read the policy, you will need to write to Property Services, Borough Council of Wellingborough, Swanspool House, Wellingborough NN8 1BP, with a formal request to purchase, accompanied by a sketch plan to help identify the area of land required. You will need to add as much detail as possible to identify the location and size of that land.
- c. We will acknowledge receipt of that letter.
- d. You will then have to wait until the council establishes whether the land in question is within its ownership. In order to provide you with documentary evidence of this a land registry search will be carried out; you will be required to pay the cost of this search together with a 10% administrative fee. If you would prefer to carry out the property search yourself please follow the procedure on the Land Registry website: <http://eservices.landregistry.gov.uk>. You can then submit the search results with your letter.
- e. Assuming the council does own the land, we will inspect the site and research its legal (e.g. for restrictive covenants preventing use) and historical background. We will also review the criteria outlined in 4 above to determine whether we are permitted to dispose of the land.
- f. You are also advised at this stage to consult with the council's planning service about the need for, and likely prospect of, obtaining planning consent – if that is your intention.
- g. It is possible that land will need planning consent for a change of use, even if it is only to be used for a garden extension.
- h. Any decision by the council to sell the land is separate from any decision to grant planning consent, and the prospective purchaser must not assume that planning consent will be granted automatically just because the council ultimately decides to sell the land. It will be a condition of any sale that the prospective purchaser pays for and is responsible for obtaining that separate planning consent and any pre-application advice needed.
- i. Once the decision is made either to retain or dispose of the land, the council will inform you. The decision to dispose of small areas of land adjacent to private properties will be made by the officer designated as Corporate Landlord. He or she may decide to refer this decision to councillors if it is likely to be a matter of public interest.
- j. Depending upon the amount you offer for the land, the council may still decide not to accept it. It is not possible to give advice on the amount to offer as every disposal is unique. However, the council will have had an independent valuation, and will not recommend acceptance at less than that. Any sale, no matter how small, will not be entertained at less than the amount stated in the costing table below:

<b>Summary of possible costs</b>	<b>Payable by the prospective purchaser</b>
Value of land	As valued, but not less than £1,000

Surveyor's valuation fees	Approximately £125 +VAT
Council's legal costs	Approximately £125 +VAT
Planning application fee	Planning authority scale of charges
Purchaser's own solicitor's costs	As charged by solicitor

- k. All sales, regardless of value, will require the successful purchaser to meet the council's surveyor fees and legal costs. These will vary depending upon the value of the disposal and complexity of the sale, but will not be less than the amount stated in the costing table in each respect.
- l. After acceptance of an offer, the council's legal service will prepare transfer documentation. The council will need to know the contact details for your solicitor and you will have to meet your own legal costs. Usually, at this stage you will submit your planning application for change of use, if this is relevant, and completion can be deferred for a reasonable period whilst this is resolved.
- m. In the period before formal exchange of sale contracts, although the council will not encourage other interest in the land, potential purchasers should be aware that the council is obliged to consider any higher offer that is subsequently submitted. Any costs incurred by a potential purchaser prior to completion are entirely at their own risk and cannot be recovered from the council should a sale not proceed for any reason.
- n. Exchange and completion of sale will end the process.

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