

Report for: Cabinet 3rd July 2017

Item number:

Title: **Community Building Review: Community Asset Transfer Policy 2017**

Report authorised by : Lyn Garner, Director of Regeneration, Planning & Development

Lead Officer: Laura Bridges, Head of Strategic Property
Charlotte Pomery, AD Commissioning

Ward(s) affected: All

**Report for Key/ Non Key
Non Key Decision:**

1. Describe the issue under consideration

- 1.1. The purpose of the report is to seek Cabinet approval of a Community Asset Transfer Policy (CAT) for the council's community building portfolio.
- 1.2. The Policy is a progression of previous Cabinet decisions on 18 December 2012 as well as 14 July 2015 to rationalise the management of the community building portfolio as well as consider the implications of the Localism Act 2011. The previous recommendations of the community building review sit within the Community Strategy.
- 1.3. The Policy sets out the circumstances in which, where organisations wish it, the transfer of long leases to incumbent community organisations that are part of the council's community building portfolio can take place. The aims of such a transfer are to enable organisations to self-manage their property assets, to make longer term decisions on their accommodation and to raise funds against the collateral of a long lease. The process is about giving local people and community groups greater control in the future of their area and their community.
- 1.4. Cabinet will need to agree separately to the transfer of any individual asset within the policy.

2. Cabinet Member Introduction

- 2.1. The establishment of a policy that enables the transfer of assets to incumbent community groups will provide a valuable opportunity for organisations to gain greater control in the way they use the buildings they occupy to maximise the benefits they offer to their local community.
- 2.2. This policy provides a clear framework for assessing and progressing opportunities to transfer assets with the final decision returning to cabinet for ratification.

3. Recommendations

- 3.1. It is recommended that members agree:
 - 3.1.1. To approve of the Community Asset Transfer 2017 policy document attached at Appendix A of this report.
 - 3.1.2. To note the key terms of the policy as are set out at paragraph 6.5.

4. Reasons for decision

- 4.1. The Cabinet report of 14th July 2015 sought to set out the overarching principles and recommendations of the Community Buildings Review and it was resolved to agree to establish criteria around asset transfer and lease monitoring and evaluation. The creation of a Community Asset Transfer is therefore delivering on these previously agreed recommendations.
- 4.2. The policy is required to establish a significant change in emphasis in the way that community organisations manage their assets. Community Asset Transfer is recommended as good practice by the Localities Team as part of DCLG and has been tested as compliant with legislation arising from the Localism Act 2011 (the Act).
- 4.3. Devolution of powers to manage assets is anticipated to enable more efficient and effective management and utilisation of built assets as well as securing savings in officer time in the maintenance of multiple forms of lease.
- 4.4. The process is about giving local people and community groups greater control in the future of their area and their community. If local organisations own long term interests or manage community buildings, such as community centres, it can help promote a sense of belonging in the community and bring people from different backgrounds together to work towards a shared goal, creating lasting change in local neighbourhoods.

5. Alternative options considered

- 5.1. An analysis has been undertaken of 4 of the 14 pathfinder authorities, all city councils that agreed to introduce community asset transfer and right to bid policies as arising from the Localism Act 2011 to determine the appropriate set of principles to include in a Community Asset Transfer policy. Policies of Lambeth and Calderdale Councils have also been examined as they were recommended by the Localities Team as being good practice.

Freehold vs Leasehold Transfer

- 5.2. Consideration has been given to the terms upon which an asset would be transferred and key to this is whether a long lease or the freehold would be transferred. The following points have guided the decision that a 125 year FRI lease would be offered.
- 5.3. The council intends to ensure that the community asset it transfers is safeguarded for community use and does not provide any opportunity for development of the asset for alternative use.
- 5.4. This full safeguarding of community use can only be achieved through terms and conditions set out in a lease. Under the terms of the lease both the freeholder and leaseholder will remain committed to delivering community space and benefit for that particular location but with significant levels of autonomy over how this is delivered.

- 5.5. The alternative model of a freehold sale with covenants around planning use class was considered in depth and offers much weaker protection. Precedent shows that covenants can be overturned, allowing development for commercial gain or reduction/loss of community space and transfer to an alternative use.
- 5.6. For most groups an 125 year lease allows ample security and is considered as effectively equivalent to a freehold transfer. This length of term would allow any community organisation to borrow in order to invest in the property. Organisations will also benefit financially from taking the building on a leasehold basis, as there would be a big difference in the value of the transfer (consideration payment) with the cost becoming more affordable in reflection of the D1 only use.
- 5.7. The policy will provide the opportunity for freehold transfer to be considered only in exceptional circumstances where a business case can demonstrate a justified need. For example where other opportunities for investment in the building can only be secured with benefit to the community realised through this route. However, organisations should be aware that covenants would still be imposed to protect its use and they would expect to pay a significantly higher consideration payment than a leasehold value.

6. Background information

- 6.1. Community Asset Transfer (CAT) is the transfer of the management and/or ownership of property of land from its owner (often a local authority) to a community organisation to achieve a local social, economic and/or environmental benefit. The process is about giving local people and community groups greater control in the future of their area and their community. If local groups own long term interests or manage community buildings, such as community centres, it can help promote a sense of belonging in the community and bring people from different backgrounds together to work towards a shared goal, creating lasting change in local neighbourhoods.

Policy & Decision Making context

- 6.2. The Council has considered its portfolio of community buildings, and the proposed strategy for asset transfer arises from Cabinet decisions on three reports as referred below in Appendices 3, 4 and 5 of the policy document. In **December 18th 2012 Cabinet Agenda item 22** (recommendations accepted by Cabinet) summarised the review of the Council's community buildings and suggested there was scope to "consolidate" community assets and to release some assets for regeneration and other priorities, :
 - 6.2.1 A separate report to cabinet of **18th December 2012** outlined the requirement of the Localism Act 2011 for the Council to publish a list of Assets of Community Value (Right to Bid). The community asset transfer proposal sits alongside this initiative and it should be noted that many councils have a single policy that addresses both CAT and Right to Bid. Under the latter approach, assets are sold only at market value and without the safeguards on the future use of assets which the CAT is designed to establish.

- 6.3. The Cabinet at its meeting of **14th July 2015** agreed the overarching principles and recommendations of the Community Buildings Review as follows in summary:
- to agree to adopt the strategic framework;
 - to agree the recommendations as set out in Appendix B, and made in the context of robust assessments of building condition, lease and contracts, organisational capacity perspectives together with demand for education, health or housing and/or other regeneration needs
 - to agree the further recommendations to guide future decisions on buildings in the portfolio – to free up assets for regeneration where education, health or housing overriding need arises
 - to agree to the new Community Model lease;
 - to agree to the end of circular funding (in a phased way and to move towards payment of an agreed market rent over a period of 2-3 years);
 - **to agree to the recommendations to establish criteria around asset transfer and lease monitoring and evaluation;**
 - to agree that the authority is to work with organisations to effect the recommendations of Section 7; and
 - to note the Equalities Impact Assessment and agree that individual assessments will be undertaken as appropriate.

Key Principles of the Policy

- 6.4. An analysis has been undertaken of 4 of the 14 pathfinder authorities plus 2 other examples of good practice, that agreed to introduce community asset transfer and right to bid policies as arising from the Localism Act 2011 to determine the appropriate set of principles to include in a Community Asset Transfer policy.
- 6.5. Accordingly, the key principles of the CAT policy can be summarised as follows:
- CAT would involve the transfer of built assets to community groups that are already incumbent in those assets.
 - The purpose is to enable community groups to achieve a long term commitment to the building that promotes better management of the asset and to enable long term funding of capital projects and planned maintenance.
 - Community organisations with the benefit of long term 'ownership' of their buildings are likely to be more successful and attract external grant and other funding.
 - Organisations who want to apply for CAT will need to meet set criteria including:- being an appropriately constituted voluntary and community sector organisation, being able to demonstrate good governance, sustainability/viability and the proposed use must ensure extensive reach into the community and be open to all.
 - The default position would be to offer a 125 year Full Repairing Insuring Lease (FRI) utilising the model community lease approved by Cabinet on 14th July 2015.
 - The provisions of the long lease places restrictions on Organisations making windfall profits on sale or assignment for development of the land for uses other than Community Use class D1.

- A consideration payment will be required against the valuation of the asset which will reflect the lease terms and prescribed D1 planning use. Leases will be contracted out of the Landlord & Tenant Act 1954
 - A covenant would restrict use to the planning class use D1 community use that reflects the nature of the services offered by the applying organisation.
 - A formal service level agreement (SLA) will be required with appropriate key performance indicators in place that are regularly reviewed with mechanisms in place to ultimately determine the lease upon failure to deliver the agreed services.
 - That it is the intention to fully transfer responsibilities for the built asset and to take a light touch approach to monitoring of services through a SLA with 5 yearly reviews of alignment of services (or more frequently where there is evidence of default) to ensure a match with the needs of the community and the Council's corporate objectives.
 - The Council will have a right to monitor and assess the activities of the organisation and the organisation will have a duty to demonstrate that their business plan is on track and where it does not meet the defined objectives to produce an agreed remedial business plan that will ensure the sustainability of the organisation and its agreed outcome.
 - Cabinet will still need to agree separately to the transfer of any individual asset within the policy.
- 6.6. There are a number of fundamental pre-qualifying conditions which will determine whether an organisation can move forward in obtaining a decision to transfer an asset. Organisations must be:
- Occupying premises in Haringey and offering services to Haringey residents, with evidence of reach to Haringey residents
 - Not subject to investigation by the relevant regulator, which may include the Charity Commission, Ofsted or the Care Quality Commission
 - Able to evidence that the organisation is viable and that accounts are up to date and filed with the appropriate national body
 - Set up as an organisation operating in the voluntary and community sector – they must be structured to reinvest their profits back into social causes. This for example would include registered charities, community amateur sports clubs, not for profit companies, community interest companies and social enterprises.
 - Demonstrate that they are operating in a transparent manner – local residents should be able to publically access information on the services or facilities that the organisation provides
 - Able to demonstrate that they deliver social benefit within the local community to include impact and outcomes across at least one of the following domains:-
 - Prevention and Early help;
 - Local employment;
 - Equity and social inclusion;
 - Building strong communities;
 - Healthy life expectancy; and
 - Sustainable environment.
- 6.7. The full policy document is available at Appendix A.

Decision Making Process

6.8. The process to determine whether an asset is to be put forward to Cabinet and approved for transfer can be summarised as follows:

Stage 1:

- Community group or council trigger review of the asset for transfer. Where a community group has triggered the review they will be advised of the pre qualifying criteria they need to meet and information on documentation such as a Business Plan that they will need to prepare. A template process document will be issued to them for completion.
- A valuation will be commissioned to determine the consideration payment that would be due.
- The council's commissioning team in conjunction with Priority 2 and in consultation with members advise whether pre qualifying criteria can be met and if asset transfer should be considered further. If yes, proceed to Stage 2.

Stage 2:

- Community group are asked to prepare a business plan
- Business plan reviewed and if approved proceed to Stage 3

Stage 3:

- Community group asked to prepare SLA
- Council initiate cabinet approval process via ratification by SLT & CAB
- If cabinet approved, obtain statutory consent if required and then proceed to Stage 4

Stage 4:

- Legal instructed to prepare lease
- Lease transfer completed.

6.9. A Process flow diagram setting out the step by step process of decision making for the Transfer of Community Assets is set out as part of the policy document. The process is likely to take a minimum of 6- 9 months to obtain a cabinet approval.

7. Contribution to strategic outcomes

- 7.1. Corporate Plan, *Building a Stronger Haringey Together 2015-18***:- Approval of the CAT policy set out in the report confirm a new approach to the management of some of the community buildings portfolio by the Council and addressing corporate ambitions in particular relation to Priority Two: *Empower all adults to live healthy, long and fulfilling lives.*
- 7.2. Community Strategy, *Working Together with Communities***:- The proposals set out in the report are in line with the strategic objectives of the Community Strategy.
- 7.3. Corporate Asset Management Plan**:- The proposed approach is also consistent with the principles of the Corporate Asset Management Plan (AMP) currently being refreshed. The refreshed AMP will focus on delivering better services for the people of Haringey by demonstrating good use of resources for the Council.

- 7.4. **Localism Act 2011 – Community Rights to Bid and Challenge:-** The policy document is aligned with the Localism Act 2011 and the mandate to shift power from central government into the hands of individuals, communities and councils.

Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8. Finance

- 8.1. This report seeks Cabinet approval of a Community Asset Transfer Policy (CAT) for the Council's community building portfolio.
- 8.2. The Policy proposes the transfer of a 125 year Full Repairing Insuring Lease (FRI) utilising the model community lease approved by Cabinet on 14th July 2015. These long leases will be offered to incumbent community organisations that are part of the council's community building portfolio.
- 8.3. A consideration payment will be required against the valuation of the asset which will reflect the lease terms, prescribed D1 planning use and condition of the building;
- 8.4. The successful community organisations will pay monies in exchange for these long leases and hence generate income for the Council. Also, the Council will lose some of its repair and maintenance obligations, and hence have reduced expenditure for the Council. This cannot be quantified at this stage until lease valuation has taken place.
- 8.5. All costs associated with implementing the policy will be met from existing budgets.

9. Legal

- 9.1. The CAT policy would allow the Council to transfer properties owned by the Council to certain community groups should the conditions set out in the policy be satisfied. The council must when disposing of a property asset comply with the statutory provisions governing the disposal of that property, therefore separate legal advice must be obtained at the time a decision is made to dispose.

10. Equality

- 10.1. The Council has a public sector equality duty (PSED) under the Equality Act (2010) to have due regard to the need to:
- a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - b) Advance equality of opportunity between people who share relevant protected characteristics and people who do not

- c) Foster good relations between people who share relevant characteristics and people who do not.
- 10.2. This duty covers the following protected characteristics: age (including children and young people), disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is not anticipated that the adoption of this policy will have negative impacts on these characteristics. Further, each future Transfer of Community Assets will be considered individually by Cabinet. Officers will be required to demonstrate how each transfer meets the Council's PSED set out here and our local commitment to fostering social inclusion.
- 10.3. The Community Asset Transfer Policy commits the Council to ensuring that Haringey's community buildings, as established in the Community Buildings Review, are safeguarded for long-term community use. Establishing a standard 125 year lease will ensure both freeholder (the Council) and leaseholder enter a long-term commitment to delivering community space and community benefit. This consistent approach will: ensure good management of the built asset; ensure organisations seeking a Transfer of Community Assets clearly and continuously demonstrate the benefits to Haringey's communities; and enable those community organisations to invest in Haringey for the long-term.
- 10.4. In addition any organisation applying for a Transfer of Community Assets will be required to demonstrate that:
- The organisation's purpose and activities deliver social value for all Haringey residents, including requirements set out in Social Value Act 2013;
 - Their services will be accessible and inclusive for all residents;
 - Their activities support the Council's priorities, as set out in Section 7 of the Cabinet report and Appendix 7 of the policy.
- 10.5. The Council will ensure that these criteria are applied to all Transfer of Community Asset considerations, with full assessment of the impact on Haringey residents from the beginning of the process. This process is set out both in the policy (attached as Appendix A) and in Section 6.9 of this Cabinet report.

11. Appendices

- 11.1. Appendix A Community Asset Transfer Policy 2017

12. Local Government (Access to Information) Act 1985

- 12.1. None.