

Report to: Place Scrutiny Committee

Date of meeting: 28 March 2023

By: Chief Operating Officer

Title: Community Asset Transfers and Asset Use

Purpose: To outline the Council's approach to disposal or letting of assets to community groups

RECOMMENDATIONS

Place Scrutiny Committee are recommended to:

1) note the contents of the report.

1 Background

1.1 The Council's strategic framework for its assets is set out in the Council's Strategic Asset Plan 2020-2025. The Committee asked for an update on the Council's approach for assets that have been sold or let to community groups.

2 Supporting information

2.1 The Council's operational portfolio comprises assets where they are used directly by the Council, or in connection with its partners including local authority run schools. Over the years, the County Council's delivery of services has evolved reflecting the Council's Plan (updated each year) and the State of the County report. Any service delivery changes can impact on the continuing use of particular operational assets not needed for direct delivery. These assets, therefore, become non-operational or known as 'surplus assets' once they cease to be used for operational use.

2.2 Significant changes in service delivery often occur following the outcome of public consultation. Historically, the Council has set out its intended service changes in a Lead Member report, by the appropriate service directorate. If these service changes result in assets no longer being required for its direct delivery, then specific reference is normally outlined in the report that they are surplus/non-operational.

2.3 The Lead Member reports often set out if surplus assets are to be available for community use or to be made surplus for onward disposal.

2.4 The below sets out some examples for the process that is followed and the factors that are considered including the statutory requirements for any such transfers. In general, whether an asset is used for income generation, sold for capital receipt, or transferred for community use depends on the circumstances such as market value, the availability of community groups to come forward, site location and involvement of other parties such as schools.

2.5 A case study example includes the evolution of the library service delivery. This evolved following public consultation and a Cabinet revised strategy that encouraged some of the smaller libraries to be run by local community groups. This approach was documented in the formal approval process. In this process of transfer to community groups, it was necessary to agree lease terms. In order to do this, Community Interest Companies (CIC) had to be set up in order to have a legal entity to agree terms with. This is a time consuming process and in the instance of one library, a community group did not come forward at all. In this case, the asset was instead repurposed for operational use for the Bibliographic Service in February 2023, as a result of moving out of Ropemaker Park premises.

- 2.6 In another example, in relation to a review of Children's Services Department (CSD) children's centres, a reduction in the core number of centres did occur following public consultation and Lead Member approval. In this example, a handful of assets were identified as part of the children's centre review and they were returned to school/Academy use as they were within school grounds. There were also two centres where opportunities were considered for community groups. One centre in Bexhill was marketed seeking offers from public partners and community groups and there was significant dialogue with an NHS partner and a community group for the future use of this asset. The community group were given time to see if they could establish a CIC and work up a business case to allow officers and Members to evaluate a decision. The community group were not able to provide the necessary information and therefore the asset was let to an NHS partner who could deliver specialist educational health care provisions in the community. For the other children's centre asset, discussions took place with a community group who did establish a CIC and the appropriate agreement was put in place to allow them to occupy the asset for wider child care provision.
- 2.7 In the past, the Council has agreed disposals or lettings to community groups with distinct Lead Member approval to specific community groups/voluntary groups. For these community groups, there are some key actions that need to be undertaken that can take considerable time. A community group often needs to secure external funding, set up a legal entity, finalise and agree lease/legal documents including holding negotiations on lease terms. The Council's Property team have worked with Legal colleagues to get a number of these finalised in the last 18 months though both teams are limited in their available resources.
- 2.8 The Council has just set up an officer Asset Management Group, which is looking to assess the forthcoming assets that may become surplus or non-operational in the next 12 months. This will allow officers to set out options for each potential asset that looks at (i) opportunities for income generation (ii) community use (iii) capital receipt including any temporary use.

Statutory considerations

- 2.9 Section 123 of the Local Government Act 1972 enables the Council to dispose of land and its assets in any manner it sees fit. However, this power is limited to such that the Council must obtain best consideration, except with the consent of the Secretary of State. It has generally been held that open market value of the land in question is relevant when determining whether best consideration has been achieved.
- 2.10 However, the Local Government Act 1972 General Disposal Consent Order 2003 removes the requirement for the Council to seek the consent of the Secretary of State where it wishes to dispose of land below best consideration in specified circumstances. These are where the Council considers the disposal is likely to contribute to the achievement of the promotion or improvement of economic, social, or environmental well-being provided that the undervalue is £2 million or less. The definition of a disposal of land/building includes a freehold transfer or the grant of a lease over 7 years. For context, some of the lettings to community groups in paragraphs 2.5 and 2.6 were under 7 years.
- 2.11 In this context the undervalue is the difference between the market value of the asset (known as the unrestricted value of the asset) and the letting or sale price below market value (known as the restricted value). For example, an asset may have a market rent (unrestricted value) of £25,000 per annum and a potential letting at a lower level (restricted value) could be £1 per annum. The difference is known as the undervalue (see below). Likewise, an open market value of an asset for freehold disposal could be £1 million (unrestricted value) but the sale to a community group could be at £250,000 (as restricted value).

- 2.12 The General Disposal Consent gives local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.
- 2.13 The Council has powers under the Local Government Act and General Consent Order to sell land (lease or freehold) below market value where it can likely contribute to (i) wider promotion or improvement for economic well-being; (ii) social well-being or (iii) environmental well-being. However, any reduction in value cannot exceed £2 million, otherwise formal Secretary of State consent is required.
- 2.14 As part of the due diligence by the Property team, an internal valuation by a Royal Institution of Chartered Surveyors chartered valuation surveyor would therefore be undertaken. A report would be approved by Assistant Director, Property to confirm that the value difference is significantly less than the £2million threshold.

3. Conclusion and reasons for recommendations

- 3.1 The Place Scrutiny Committee is asked to note the contents of this report, consider and recommend any actions that should be taken in response to the contents and identify any new or emerging items for consideration.

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BACKGROUND DOCUMENTS

None