

# Waverley Borough Council

**Report to:** Executive

**Date:** 11 June 2024

Ward(s) affected: All Wards

**Report of Director:** Place

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**Report Status:** Open

**Key decision:** Yes

## Community Asset Transfer Policy

### 1. Executive Summary

- 1.1 The Council does not have a policy outlining the approach and decision-making process governing expressions of interest for the transfer of assets owned by or under stewardship of the Council deemed suitable for transfer to a Voluntary or Community Organisation (VCO).
- 1.2 A new policy has been written to guide and ensure a transparent and consistent approach by the Council when considering expressions of interest for a Community Asset Transfer to a VCO. The policy is attached at Appendix 1 to this report.
- 1.3 The report includes an illustrative selection of transfer enquiries received for parcels of land across the Borough providing without

prejudice examples of what would be assessed using the procedures and criteria set out in the proposed policy.

- 1.4 Having an adopted policy provides clarity on the steps to take both for the applicants when preparing an expression of interest for consideration, and the Council when assessing it. It enables a decision-making process governing the transferring of land to a VCO to be undertaken on a consistent and fair basis.

## **2. Recommendation to Executive**

- 2.1 That the Executive approves the proposed Community Asset Transfer Policy (Appendix 1) and notes the Equality Impact Assessment (Appendix 2).

## **3. Reason(s) for Recommendation:**

- 3.1 To set out a robust policy that provides a transparent and consistent framework governing an expression of interest for the transfer of assets owned by or under the stewardship of the Council, to VCOs in the best interest of the Council and the community.
- 3.2 To deliver community objectives by considering options for transfer of assets; to community led groups where appropriate to improve the health and wellbeing of residents.
- 3.3 The Council is the custodian for its assets and has a duty of stewardship over their management. It is appropriate that robust governance is in place to safeguard their ownership and use.

## **4. Exemption from publication**

- 4.1 None.

## **5. Purpose of Report**

- 5.1 To set out a draft Community Asset Transfer policy that the Executive can apply to assess an expression of interest for the transfer of assets owned by or under the stewardship of the Council.
- 5.2 The report explains the benefits to be gained from having a policy that sets out what applicants wishing to submit an expression of interest for the transfer of an asset need to do, and what steps the Council will follow to make a decision that is robust, consistent and transparent. Having no policy creates uncertainty around the process being applied by the Council and whether expressions of interests and VCOs are being considered on a fair and equal basis.
- 5.2 The policy provides a clear and robust procedure to guide applicants. VCOs submitting expressions of interest will have to demonstrate a clear purpose for the transfer; what benefits will be gained for them, the Council and the community; and that they have the resources (financial or otherwise) and ability to the manage the asset for the purposes intended. A list of VCOs that can apply is included in the policy.

## **6. Strategic Priorities**

- 6.1 This policy supports the Council's strategic priorities detailed in the Corporate Strategy 2020-2025 by way of empowering communities and improving the health and wellbeing of residents and communities.
- 6.1 By setting out a formal policy for Community Asset Transfer, the Council is making the process clear for voluntary and community groups wanting to make a business case for the transfer of parcels of land and buildings that they wish to participate in owning and managing.
- 6.2 In many cases, the land that would be forwarded for consideration includes open spaces and recreation facilities that in turn can facilitate the health and wellbeing of residents and communities

across the borough. Any such transfer would need to comply with the relevant statutory provisions.

## **7. Background**

- 7.1 The Local Government and Public Involvement in Health Act 2007 and Localism Act 2011 brought about a number of public sector reforms aimed at creating strong, prosperous communities and delivering better public services through a re-balancing of the relationship between Central Government, Local Government and local people by giving residents a greater say over local services.
- 7.2 The 2007 Quirk review was part of the Government's programme for empowering communities set out in the Local Government White Paper published in late 2006. The review sought to give local authorities a better understanding of how existing powers could be used to facilitate the transfer of assets to more community asset management and ownership taking account of the need to manage risks.
- 7.3 The Council is in the position of a trustee in relation to the land and assets that it holds on behalf of the community. The purpose of the Community Asset Transfer policy is to set out a transparent and consistent approach to expressions of interest and decision-making process governing the transfer of land to a VCO. The policy defines which VCOs are deemed suitable for consideration by the Council for a Community Asset Transfer.
- 7.4 The policy also defines the different types of land and buildings and circumstances that may be considered when a Community Asset Transfer expression of interest is received. Examples of where transferring would be considered and supports the Council's Strategic Priorities include where a Council owned asset:
- Supports the Council's community objectives or was formerly delivering such objectives and the asset is now surplus to the Council's own requirements; or

- Contributes towards community empowerment and generates social, economic or environmental benefits.

- 7.5 The schedule at Appendix 3 lists examples of historic and proposed enquiries illustrating the typical kind of asset transfer that would be considered. Several transferees are community and charitable organisations leasing properties from the Council. To encourage the community benefits they bring to the area, the Council assisted these organisations at the time by agreeing a lease.
- 7.6 During the application stage, VCOs will be required to provide a business case for their proposed use of the asset and must demonstrate that there is a clear intention for the long-term use of the asset. This will include providing details of the activities the VCO wishes to deliver as well as demonstrating that they have a secure financial base to ensure long term sustainability.
- 7.7 The policy states that the transfer of an asset will be by way of a lease, with disposals of a freehold interest being considered in exceptional circumstances. All Community Asset Transfers would be the subject of a specific report to the Council's Executive for approval or full Council as appropriate.
- 7.8 This policy does not preclude the Council still having the ability to separately grant short-term leases to community groups either at market rent or, under prescribed conditions subject to statutory provisions, at less than best consideration. Such lettings are dealt with in accordance with officer delegations set out in the Constitution or by way of an Executive decision. Officers are preparing a separate policy governing a process for making decisions on disposing assets at Less Than Best Consideration.
- 7.9 This draft policy will sit under the Council's overarching Capital Strategy, which brings together the detailed policies, procedures and plans relating to land and building assets and applies to the General Fund, Housing Revenue Account and the Trusts (for which the Council is Trustee).

7.10 Investment Properties fall under the Asset Investment Strategy and are not part of this report.

## **8. Consultations**

8.1 The Lead Councillor for Finance, Assets and Property, has been consulted and has endorsed the proposed policy.

8.2 Officers will engage with Ward Councillors on the individual transfers at the relevant time.

## **9. Key Risks**

9.1 The criteria laid out in the policy aims to ensure that any VCOs are clear from the outset what is required of them and on what basis the Council will approve an asset transfer. The detailed nature of the policy is to mitigate the risks associated with any transfer.

9.2 A transfer will only be granted to suitable organisations with demonstrable experience and resources in place to manage a community-based asset over the longer term. There is no definition of what is meant by long-term, but the principle of a Community Asset Transfer is that the Council divests itself of ownership and control of an asset, and VCOs correspondingly take on responsibility and can sustain long-term ownership.

9.3 The Quirk Review and guidance around Community Asset Transfer and management makes clear that local authorities must support and work with VCOs to ensure any transfer does not fail. This could have financial and resource implications for the Council should the need arise to provide a VCO with support. The Council may incur fees to prepare the transfer, including valuers', advertising, surveyors' and legal fees. The Council will seek to pass these on to the VCO unless the VCO can objectively show it cannot meet such costs.

9.4 Regarding legal costs in particular, these are likely to be incurred by the Council when considering each request on a case-by-case basis. This increases the likelihood of the use of external legal

services (due to existing pressure on internal legal services) and such legal costs should be passed on to applicants at application stage should this policy be adopted.

## **10. Financial Implications**

- 10.1 The Council faces many current challenges both financial and operational including the prevailing economic environment and reduced government funding leading to a funding shortfall, increased public expectation and a reduction in available resources to operate and run community assets.
- 10.2 By divesting of a property asset by transfer to a VCO, the Council can support the economic, social or environmental wellbeing of the community. Depending on the circumstances, the Council may also achieve possible revenue, maintenance and associated operational cost savings. Savings will be dependent on the size and nature of the asset to be transferred and its proposed use.
- 10.3 The Council may incur certain costs due to this transfer policy and will seek to pass these on to the relevant VCO.

## **11. Legal Implications**

- 11.1 Any decisions on transfers would need to be agreed by the Executive or full Council as appropriate.
- 11.2 The Council should seek tailored legal advice on a case-by-case basis before undertaking any Community Asset Transfer. A brief summary of the key legal implications is below, but each situation will need to be considered individually.
- 11.3 If the Council cannot show that the process and decision were undertaken in a proper and reasonable fashion, it may find itself exposed to a costly and time-consuming challenge by way of judicial review.

- 11.4 The Council must, under s123 of the Local Government Act 1972, obtain the best consideration that can be reasonably obtained for the disposal of land, unless it has the express consent of the Secretary of State or if the Council considers this will help to secure the promotion or improvement of the economic, social or environmental well-being of its area.
- 11.5 Disposals of land include: a sale of the freehold interest; granting a lease; assigning any unexpired term of a lease; and granting an easement. If publicly owned land is disposed of at less than best consideration, the local authority is likely to be providing a subsidy to the purchaser and must consider the rules on subsidy control too (i.e., is there a risk of distorting competition/being anti-competitive).
- 11.6 If the land is being disposed at an undervalue exceeding £2 million, this will also require the specific consent of the Secretary of State.
- 11.7 Prior to considering disposal at less than best consideration it is essential to identify the purpose for which the land is held, as specific additional legal requirements may apply. This policy will not fit all circumstances, so legal input should be sought in each case early in the process.
- 11.8 Common land usually cannot be disposed of under section 233(2) of the Town and Country Planning Act 1990 without the Secretary of State's consent.
- 11.9 Appropriate restrictive covenants would be inserted, as appropriate, into any transfer deed or lease to include, but not limited to, restrictions on use for community benefit and preventing change of use, development, re-development, seeking planning permission without the Council's express written consent, onward sale, lettings, assignments or sharing of use with other organisations, as well as restrictions on causing nuisance.
- 11.10 The VCO should be obliged to return the relevant asset in a good state of repair and maintenance via a positive covenant in the

relevant legal document; this will help to protect the Council from a dispute or costs in the future.

11.11 If the community purpose of a VCO ceases, protection to the Council can be provided by contractual positive covenants or rights of first refusal for the asset to be transferred back to the Council (or its successors in title) from the VCO at nil value or an option for the Council (or its successors in title) to re-acquire the asset.

11.12 Freehold land transfers will be considered where there are demonstrable objective reasons why a lease is not the most appropriate transfer mechanism.

11.13 In the event that a freehold transfer is deemed the most appropriate means of transferring, overage provisions may be appropriate so that in the event of a further disposal of the land by the VCO, such that the Council would benefit from any future redevelopment of the land.

## **12. Human Resource Implications**

12.1 Depending on the nature of the asset and current staff resource to manage it there is a slim possibility that the transfer of an asset or group of assets impacts on Council staff in terms of a reduction in their role or potential transfer to another organisation. If this became a possibility, the impact on the affected employee(s) would need to be accounted for. Should such a situation arise officers would follow due process, consultation and procedures, and report to the Executive as part of a proposal to transfer.

12.2 Processing expressions of interest and dealing with any subsequent transfer transactions will demand varying amounts of officer time across the Council.

### **13. Equality and Diversity Implications**

- 13.1 Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equalities Act 2010) when making decisions and setting policies.
- 13.2 An Equalities Impact Assessment has been completed in regard to the draft policy and is set out at Appendix 2.

### **14. Climate Change/Sustainability Implications**

- 14.1 No Environmental Impact Assessment has been carried out as there are no risks identified as part of the adoption of the proposed policy. However, Community Asset Transfer does promote economic, social and environmental, community well-being and the public health of communities.

### **15. Summary of Options**

- 15.1 Do not adopt policy – this would not address having a consistent decision-making process and voluntary and community groups and Council officers would not have a clear procedure to follow if a group or organisation wished to submit an expression of interest or even if they qualify as a VCO.
- 15.2 Adoption of Policy – this would provide a strong governance framework around asset transfer and allow both the Council and VCOs to follow and consider expressions of interest in a consistent, robust and transparent manner. This is the recommended option.

### **16. Conclusion**

- 16.1 Community Asset Transfer is not governed by statutory instrument and is a process agreed by local authorities based on their own community objectives. Adoption of the policy will bring clarity to a decision-making process that benefits the community and helps the Council achieve its community objectives.

## 17. Background Papers

17.1 None

## 18. Appendices

Appendix 1 - Draft Community Asset Transfer Policy

Appendix 2 – Equality Impact Assessment

Appendix 3 – List of Transfers Completed and Proposed

Please ensure the following service areas have signed off your report. Please complete this box, and do not delete.

Service	Sign off date
Finance / S.151 Officer	7/11/23
Legal / Governance	29/05/24
HR	15/05/24
Equalities	15/05/24
Lead Councillor	07/05/24
CMB	07/11/23
Executive Briefing/Liaison	14/11/23
Committee Services	15/05/24