

# Gloucester City Council

<b>Meeting:</b>	<b>Overview and Scrutiny Committee</b>	<b>Date:</b> 5 <sup>th</sup> June 2023
	<b>Cabinet</b>	<b>Date:</b> 14 <sup>th</sup> June 2023
<b>Subject:</b>	<b>Community Asset Transfer Policy</b>	
<b>Report Of:</b>	<b>Cabinet Member for Performance and Resources</b>	
<b>Wards Affected:</b>	<b>All</b>	
<b>Key Decision:</b>	<b>Yes</b>	<b>Budget/Policy Framework: Yes</b>
<b>Contact Officer:</b>	<b>Abi Marshall, Property Commissioning Manager</b>	
	<b>Email:</b> <a href="mailto:abi.marshall@gloucester.gov.uk">abi.marshall@gloucester.gov.uk</a>	<b>Tel:</b> 396212
<b>Appendices:</b>	<b>1. Community Asset Transfer (CAT) Policy</b>	

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 The Council are regularly approached by Community Organisations/ Third Sector Organisations (CO/TSO) who wish to take on land or buildings, to support their organisational aims. There are over 10 organisations currently actively hoping to engage the Council into transferring an asset.
- 1.2 Empowering a CO/TSO to be independent has many benefits, if approached in the right way. It is equally important that the asset is protected for future generations and communities and the proposals are viable.
- 1.3 The Policy seeks to establish a framework and a process to help establish if a community organisations proposal is viable and how the Council can consider supporting an approach within verifiable parameters.

### 2.0 Recommendations

- 2.1 Overview and Scrutiny Committee is asked to consider the information contained in the report and make any recommendations to the Cabinet.
- 2.2 Cabinet is asked to **RESOLVE** that the Community Asset Transfer (CAT) Policy is adopted.

### 3.0 Background and Key Issues

- 3.1 The Council is often approached by CO/TSOs to transfer an asset (land or building) to them at nil value.
- 3.2 CO/TSOs are predominately community groups, often run entirely by volunteers or with a few paid employees. They may either currently be in occupation of a Council asset or wish to take occupation of a Council asset. However, due to their constrained financial resources they are not in a position to pay full commercial rents and still be able to meet their desired goals. They often rely heavily or in part on external funding,

grants, or appropriate loans, balanced with significant contributions from their volunteers.

- 3.3 The Council must ensure that the buildings owned by it are properly managed and maintained so that they continue to be available for use to meet Council objectives. In order to meet these requirements, rental income can be collected and reinvested into the assets with the burden of repair and maintenance remaining with the Council. Alternatively, where the burden of managing and maintaining the asset can be passed to a CO/TSO that has objectives similar to those of the Council, the value of the rental income may be offset by social value considerations.
- 3.4 Where the onus to keep the property in repair, so that it remains a safe and useable asset passes to the CO/TSO, the Council must consider if:
- The CO/TSO has the skill set and ability to look after the asset and understand relevant property legislation and requirements.
  - Does the CO/TSO understand the potential financial burden of these works.
  - Are the CO/TSO going to undertake relevant due diligence prior to their approach to the Council to know that their request is feasible:
    - Legally – for example planning and building regulation requirements, public open space legislation, landlord and tenant laws, energy performance certificates etc, etc
    - Financially – do they understand the condition of the property, potential upcoming repairs or works, the cost of meeting legislative changes to building and climate regulations. Potential funding opportunities. Ability to pay for or find expert help or advice.
    - Physically – does the building or land meet their space requirements. Is it safe, is there room for expansion. Does it meet funders requirements.
- 3.5 The Council currently have over 10 CO/TSOs looking to take on land or buildings. Many of these approaches would not be able to demonstrate that their proposals would be viable, creating the risk that the CO/TSO would fail both operationally and financially. In these circumstances it is often the case that appropriate repairs and maintenance are not performed due to their cost leaving the Council owned buildings at high risk of accruing significant remedial repair costs for the Council, and a risk of obsolescence leading to an unusable building. This risk can be minimised where the CO/TSO comes to the Council with a considered and reasoned business case.
- 3.6 The Councils priority is protecting the longevity of the Community opportunity for the use of future communities. Therefore, an exit strategy is also an important consideration that needs to be included in any potential CAT. i.e. What happens to the asset if the CO/TSO fails?
- 3.7 Each asset adoption proposal made by a CO/TSO will be considered on an individual basis. The purpose of the Policy is so that we are given sufficient information on which to base a decision and how we manage the workflow and the decision making process is clear. The applicant is given a process to follow and is given an indication of when they will hear back from us.
- 3.8 The CAT policy will:
- Set expectations as to what the Council need to consider an application.
  - Give an indication of the process and timeframes, manage the process.

- Make clear supported decisions.
- Allow clubs to help themselves by better understanding the implications of their request, which better helps the Council understand the viability of the proposal.
- Allows the Council to better support our CO/TSOs, applications will be considered on an individual basis.
- More productive conversations and an equalised opportunity.
- More transparency around decision making.

#### **4.0 Social Value Considerations**

- 4.1 CO/TSO's provide important hubs across Gloucester that **give people an opportunity to socialise, learn and access key services** and can perform vital functions in communities.
- 4.2 The Council want to support our CO/TSO's but in a way that ensures longevity and success, and that does not put the Council's assets at risk.
- 4.3 Social considerations will also form an important element of any CO/TSO's applications for a CAT.

#### **5.0 Environmental Implications**

- 5.1 Having options on the doorstep in terms of community provisions will lessen the need to travel.
- 5.2 Buildings will have Energy Performance (EPC) ratings which we will seek to improve with any successful CAT application. We will work with the CO/TSO.
- 5.3 Any 'new build' proposal will have to demonstrate sustainable community design practices.

#### **6.0 Alternative Options Considered**

- 6.1 Do nothing.

We already have tenants who have benefited from preferential terms due to their CO/TSO status and what they deliver for our communities. Many of these tenants are what is know as protected tenants. This means they have an automatic right to renew their tenancies on the same terms, apart from the rent. To meet other legislative requirements the rent would have to go up and a 'market rent charged' unless we could apply a standardised policy. Therefore, doing nothing is not an option due to the legal status of our tenants we have to do something to help protect the services and benefits they deliver.

- 6.2 Continue as we do now.

This is causing confusion, organisations are unclear how best to meet their objectives and often CO/TSO's are made promises, or making demands on the Council that legislatively, financially, physically impossible to deliver. This leads to frustration, and reputational damage. By having a clear policy, we can treat every CO/TSO on their own merits and manage their expectations. We can forge stronger and better relationships benefiting the communities we serve.

#### **7.0 Reasons for Recommendations**

7.1 We need to provide a clear framework and process to empower our CO/TSO's and help forge stronger, more positive relationships and enable more success stories and increase what we can do to best serve our communities together.

7.2 We can be more robust and reasoned in our decision making and increase transparency around the decision making process.

## **8.0 Future Work and Conclusions**

8.1 The Policy should be kept under review and adapted to reflect and learn from the process. The Policy recommends that it is reviewed at least once every three years.

8.2 We should share the policy with our current CO/TSO tenants and allow sufficient lead in times to best support their requirements. We should share the Policy with the many hopeful CO/TSO's who are keen to engage with the Council.

8.3 We should do a lunch and learn and share the policy contents more widely with internal staff (and Members) so they are able to understand the benefits, and signpost relevant organisations.

## **9.0 Financial Implications**

9.1 The adoption of the proposed CAT Policy leads to a protection of the Council assets and therefore if applied appropriately should safeguard the finances of the Council. Regular dialogue with the CO/TSOs and monitoring of assets subject to CAT would be required to ensure the obligations accepted in their business plans and follow-on agreements are being adhered to.

(Financial Services have been consulted in the preparation this report.)

## **10.0 Legal Implications**

10.1 A sale or a lease of land of more than seven years is regarded as a disposal. Section 123 Local Government Act 1972 provides the Council with the power to dispose of land in any manner provided that such a disposal is for the best consideration reasonably obtainable.

10.2 The disposals under the CAT Policy are in most cases likely to be granted at less than best consideration. The Council will therefore need to carry out a cost benefit assessment in each case to consider its powers to dispose under the General Disposal Consent (England) 2003. This applies where the Council considers the disposal will help to promote or improve the 'social, economic or environmental well-being' of the Council's area or residents.

10.3 A short term lease does not fall under the best value provisions of Section 123 of the LGA 1972. Whilst leases for a term of less than 7 years do not have to be for the best consideration reasonably obtainable, the Council must still have regard to its general fiduciary duty to obtain best value.

10.6 Heads of Terms will be agreed in advance by the Asset Management Team outlining the terms and type of the occupancy together with appropriate restrictions on use and subject to the appropriate approvals/consents being obtained.

- 10.9 In the event that the proposed disposal includes land held as public open space, under Section 123 LGA 1972 the Council has a statutory duty to advertise this disposal for two consecutive weeks in a newspaper circulating in the area, and to consider any objections raised.
- 10.2 The Community Asset Transfer Process may overlap with the statutory process for disposal of assets listed as of community value in circumstances where an asset is both listed as an asset of community value and identified as being suitable for community asset transfer. However, the fact that an asset has been listed as of community value does not of itself indicate that it is suitable for community asset transfer. The two procedures are quite separate.
- 10.3 All disposals also need to comply with the Subsidy Control Act 2022. When disposing of land at less than best consideration the Council may be providing a subsidy to the owner/ occupier. Where this occurs, the Council must undertake an evaluation of the proposed transaction to ensure that they comply with the requirements of the Act. Officers should contact One Legal for advice on undertaking this evaluation.

(One Legal have been consulted in the preparation this report.)

## **11.0 Risk & Opportunity Management Implications**

- 11.1 The main risk would be for a spoof CO/TSO organisation to try to claim a building or land for free. The robust stages being proposed in the CAT and vetting required would help limit this risk. Also, freehold interests are not likely to be offered. Where there is still doubt a commercial tenancy (on market terms) can be offered.
- 11.2 There is insufficient land and buildings to meet demand. The CAT process puts the onus on the CO/TSO's to identify the potential opportunity, working with the Council. If we do not have it within the portfolio, and there is no viable mechanism to obtain an asset then the Council will not be able to move forward. All opportunities are 'subject to contract'.

## **12.0 People Impact Assessment (PIA) and Safeguarding**

- 12.1 The CAT considered the groups that would qualify for consideration under the policy. CO/TSO's often specifically designed to fulfil those criteria and to provide for those in the community, who are disadvantaged, or marginalised, they create inclusivity.
- 12.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.
- 12.2 CO/TSO's if the CAT Policy is adopted will have to demonstrate high levels of inclusivity to be a success. Many CO/TSO's specifically target characteristics identified in the PIA.

## **13.0 Community Safety Implications**

- 13.1 N/A

## **14.0 Staffing & Trade Union Implications**

- 14.1 N/A

**Background Documents:**

*Draft CAT Policy attached in appendix 1.*