

<b>SUBJECT:</b>	<b>Community asset Transfer Request for Drybridge House, Monmouth</b>
<b>MEETING:</b>	<b>Strong Communities Select Committee</b>
<b>DATE:</b>	<b>25<sup>th</sup> February 2016</b>
<b>DIVISION/WARDS AFFECTED:</b>	<b>All</b>

**1. PURPOSE:**

To consider a request from Bridges Community Centre to undertake a Community Asset Transfer of Drybridge House on the basis of a 99 year lease.

**2. RECOMMENDATIONS:**

- 2.1** That Strong Communities decline the Community Asset Transfer request from Bridges.

**3. KEY ISSUES:**

- 3.1** Bridges Community Centre occupy Drybridge House on the basis of a 25 year lease granted on 7<sup>th</sup> March 2000. A rental fee of £1 per annum is payable with no provision for review. As a condition of the lease, Bridges undertook a number of refurbishment works funded by Heritage Lottery.
- 3.2** In March 2011, Cabinet agreed to grant a 25 year lease to Bridges to enable them to install photovoltaic panels. The new lease would be granted in accordance with the Councils Concessionary Rental Policy which requires the occupier to pay a minimum 5% of the rental value of the property. To date the new lease has not been entered into, however the photovoltaic panels have been installed.
- 3.3** In December 2015, a Community Asset Transfer application was made by Bridges on the basis of a 99 year leasehold interest. This request was declined on the basis that it did not meet the eligibility criteria as outlined in the Council's Community Asset Transfer Policy. This was on the basis that the asset is considered to hold significant development value in the event that the building ceased to be used as a community centre and that a 25 year lease had already been agreed and was available for Bridges to enter into.

**3.4** Within their application Bridges have identified that their proposal for a 99 year lease is predicated on their desire to apply for Big Lottery's Community Asset Transfer Funding, albeit that this funding pot is currently closed. Other funding streams require a minimum of 25 years unexpired at the point of any grant award. As advised a 25 year lease has already been made available to Bridges, but to date has not been taken forward by the Trustees.

**4. REASONS:**

4.1 Clearly Bridges are well regarded by users of their facilities and have been successful over the years in obtaining grant funding to undertake a refurbishment of Drybridge House and run a number of local projects designed to support the local community. The Council has no desire to frustrate these activities and has demonstrated this in its decision to offer Bridges a new 25 year lease in 2011.

4.2 The purpose of the CAT policy adopted by the Council is to safeguard the availability of property assets to local communities. In the case of Bridges the Council has already made a decision to safeguard this use through the provision of the aforementioned new lease, albeit that this would on the basis that Bridges paid a rental in line with all community groups that use Council buildings.

4.3 The Community Asset Transfer policy requires the applicant to demonstrate a viable business model to ensure that the project is sustainable in the longer term. The submitted Business Case does not provide sufficient evidence to support the income projections around new projects and increased income from existing commercial activities and no allowance is made for any rental payments.

4, 4 The Business Case provided in support of the Bridges application suggests that they need the CAT for the following reasons:

- Having longer term certainty over its lease
- And in doing so, being able to bring £1 million of Big Lottery Funding into Monmouthshire to address future needs.

The Council has already made a commitment to provide a new 25 year lease thereby providing longer term certainty. The last round of the CAT Big Lottery funding stream closed on 20<sup>th</sup> May 2015. Discussions with the Big Lottery have confirmed that they will be re-opening for applications later this year, however as the application process is yet to commence there is no guarantee that Bridges will be successful in a future application or indeed the level of funding that they would be able to secure.

**5. RESOURCE IMPLICATIONS:**

- 5.1 Should the community asset transfer application be approved the Council will be entering into a 99 year lease at a rental value significantly below market value. The nature of the lottery funding also prohibits any break clause in the first 20 years and requires an assignment clause to enable the transfer of the lease to another third sector organisation. It also requires no rent reviews in the first 20 years. This would result in a reduced capital value to the Council and be in direct conflict with the Councils concessionary rental policy.

**6. FUTURE GENERATIONS AND EQUALITY IMPLICATIONS:**

- 6.1 This report seeks to outline the reasons for declining a Community Asset Transfer request from an existing Council tenant. It has no impact upon existing services, as such a FG&E is not considered necessary.

**7. SAFEGUARDING AND CORPORATE PARENTING IMPLICATIONS**

There are no safeguarding implications associated with this report

**8. BACKGROUND PAPERS:**

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**9. AUTHORS:**

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## Appendix 1 – Big Lottery Guidance Notes for Leasehold Transfers

### Community Asset Transfer 2 - Leasehold Guidance

The purpose of this note is to give further guidance on the Big Lottery Fund's requirements if the transfer of the asset to the third sector organisation is by way of lease.

#### What are the Big Lottery Fund's requirements for leases?

1. **Term of lease** - lease must be for a minimum of 99-years, however where a clear justification is provided to demonstrate that a 99-year lease cannot be achieved, we would consider a minimum 50-year term.
2. **Assignment Clause** - The leasehold interest must be assignable to another third sector organisation with similar aims and objectives as the grant recipient. This is to permit the project to be continued by a similar organisation if the original tenant is not in a position to do so.
3. **Break Clauses** - no break clause is permitted that would allow the landlord or tenant to terminate the lease before the end of the asset liability period. The asset liability period on this programme is 20-years.
4. **Legal Charge** - the lease will need to allow the Big Lottery Fund to take a legal charge over the lease.
5. **Permitted Use** - The lease must allow the activities that the grant recipient is intending to operate as part of the Project on the property.
6. **Advertising** - The lease should not contain any clauses that would prohibit the advertising of the Big Lottery Fund's involvement and funding if required.
7. **Rent Reviews** - The lease should not incorporate rent review provisions which take effect during the 20-year asset liability period and which would result in the tenant facing a major uplift in annual rental. This is to avoid negating the purpose of the Community Asset Transfer, which is to facilitate the transfer of asset value to third sector tenants.
8. **Registered** - The lease should be registered or register able.

#### Important - Please Note:

Where a Project is to be constructed on land that the grant recipient will take on lease, and the lease has not been completed prior to release of funds, the Big Lottery Fund may require the public or private sector organisation or private individual to lodge a restriction over their freehold title to protect the Fund's interest during the period of the building works until such time as the lease can be completed and the legal charge registered.

Please contact our Legal Department to discuss our requirements:

[legal@biglotteryfund.org.uk](mailto:legal@biglotteryfund.org.uk)

## Appendix 2 – Councils adopted Community Asset Transfer policy

### **Community Asset Transfer Policy**

#### **1. What is Community Asset Transfer?**

Guidance from central guidance identifies the aim of community asset transfer as “community empowerment by ensuring that land and buildings are retained and operated for public benefit through community management and ownership”.

In essence it involves the transfer of the management / ownership of an asset from a public sector body to a community based organisation e.g. a charity, community interest company or a Town / Community Council.

The transfer of the asset can be achieved through either a freehold or long leasehold interest. Normally any transfer will be undertaken on the basis of full market value, however a sale or long leasehold interest can be undertaken at less than best consideration in accordance with the General Disposal Consent Order (Wales) 2003, subject to being satisfied that the sale / lease will result in long term sustainable local social, economic or environmental benefits.

#### **2. Why has Monmouthshire County Council introduced a Community Asset Transfer Policy?**

The Council has a large land and property holding which is used for a variety of different purposes including service delivery, economic development and community activities. For some of these assets, community ownership or management could bring benefits to the local community, the Council and other service providers.

The Governments Quirk Review “Making Assets Work” (2007), considered that transferring assets to the community would develop a greater sense of ownership, provide opportunities for finance and widen the benefits of the facility to the local community.

The Councils Your County Your Way and Whole Place agendas for the delivery of services in the future accords with the principal of the Quirke Review and this Community Asset Transfer policy (CAT) enables the transfer of land and property to be undertaken where the benefits of the proposal are proven through a business plan approach.

Broadly applications through the CAT process will need to demonstrate:

- Community development and empowerment
- Long term resilience and sustainability
- Economic development and economic well-being
- Social enterprise and social well-being
- Improvements to local service delivery
- Benefits to Monmouthshire communities
- Equality of access

- Environmental improvements and well-being
- Value for money

If the applicant is unable to provide clear evidence of direct community benefit, if surplus the asset will be sold on the open market so that it can ensure value for money.

### **3. Who is eligible to make a request for a community asset transfer?**

Expressions of interest will be welcomed from community and voluntary sector groups as well as town and community councils. Applicants should meet the following criteria:

- The applicant must be community led i.e. its governance arrangements must ensure that it has strong links with the local community, constituted for social benefit and that members of the community are able to influence its operation and decision making process.
- It must be appropriately constituted e.g. a registered charity, a community interest company or a charitable incorporated organisation, a not for profit company or a co-operative.
- Must be a Town or Community Council within the county boundary of Monmouthshire County Council or predecessor.
- The primary purpose of the organisation must be non-profit making and they must be able to demonstrate that they have a clear understanding of the services they wish to deliver and a viable and sustainable business plan.
- Demonstrate that it has the skills and capacity to effectively deliver services and manage the asset to be transferred
- Have the potential to develop the necessary skills and capacity within their organisation and demonstrate how they intend to do this, if necessary by working with the Council or other partners.
- Embrace diversity and work to improve community cohesion.
- Engaged in economic, environmental or social regeneration in Monmouthshire or is providing a service of community benefit in line with the Council's core priorities.
- Must be able to demonstrate the long term sustainability of the of the applicant organisation. Proposals made by organisations with a small number of active members are unlikely to be successful.

### **4. What assets can be transferred?**

Not all assets are available for transfer. The Council will consider transfer applications if:

- The asset is already identified as surplus and available for disposal.
- **The asset is already occupied by a community or voluntary sector group as determined by Section 3 above and the asset does not form part of a larger commercial asset e.g., car park or hold long term development value.**
- The asset is not excluded as per the Council's Disposal Policy as below:
  - Residential properties, including gardens, outbuildings and associated land
  - Caravan Sites
  - Operational land of statutory undertakers
  - Assets whose recent or current use does not meet the definition of community value, even if the intended use by a community purchaser would be of community value.

- Agricultural land and buildings.

## **5. How will we assess applications?**

5.1 In order to properly assess your application we will require you to provide detailed information on the following:

- What you intend to use the asset for and how this will help MCC in the delivery of the Your County Your Way and Whole Place agenda, meet its corporate needs and how it will improve access to services and facilities for Monmouthshire communities.
- How you intend to fund the running and maintenance costs of the asset.
- That there is a proven demand and need for the activities being proposed and consideration has been given as to whether or not this demand is being satisfactorily addressed through another provider.
- Clear management structure demonstrating how the premises will be managed on a day to day basis and consideration of how health and safety and legislative issues will be managed.
- A robust business plan which should address the following issues:

### **Meeting County wide priorities**

Demonstrate alignment with the County Council's plans and strategies.

### **Meeting Local Priorities**

- How the need for the proposed transfer and use of the asset has been identified – in particular what community needs will the transfer meet.
- Planned outcomes and benefits of the transfer.
- Evidence of community support for the proposal.

### **Improving Service Delivery**

- A statement that demonstrates that the transfer of the asset supports an improvement in local service delivery
- How will you measure the success of the transfer – i.e. what will be different and how will it be measured.
- Evidence of support from a Council Service provider or current owning department.

### **Resources**

- Finance modelling, including 5 year revenue and capital funding plans.
- A statement that demonstrates the capacity and expertise within the group to operate and maintain the asset
- A statement (evidenced by financial accounts) that the group has sufficient income to support the asset
- A financial plan and programme showing how the maintenance and running of the asset will be funded over a period of years

- Scope for collaboration, i.e. are there other community groups that could share the accommodation.
- Capacity building and how this will be delivered.

### **Investment**

- Any sources of finance including grants that the asset transfer will enable.
- Type of transfer sought and why i.e. freehold or long leasehold
- Where a transfer is being requested at less than market value, either freehold or leasehold, that the applicant has justified and quantified the benefits accruing to the community in order to justify the subsidy.

### **Risks**

- Details of how the proposed use will be monitored and proposed arrangements in the event that the transfer is not sustainable.
- Risk log
- Any liabilities and how these will be addressed.

5.2 The Council will generally pursue long leasehold arrangements when considering asset transfer as this will enable us to influence the future use of the building and prevent changes which would be inappropriate or don't meet the original criteria.

It is however recognised that in some circumstances a freehold transfer may be appropriate. Any freehold proposal would need to evidence why the freehold as opposed to a long leasehold is necessary for the success of the project and provide assurances that the community benefit will be maintained in the long term.

5.3 Given the obligations on the Council to achieve maximum financial value, all transfers will be undertaken on the basis of best price. Any requests for a discount to the market value will be considered on a case by case basis and will be based on an assessment of the business plan and the extent of the community benefit to be derived from the proposal. Any proposed transfer at less than best price will be subject to an independent valuation.

Should a freehold transfer be agreed the legal title will contain a series of clauses designed to safeguard the long term future of the building which will include a restrictive covenant, claw back clause and right of pre-emption.

## ***6. Benefits / Dis-benefits of managing property***

6.1 It is important to remember that managing property requires both time and money and before commencing a CAT application the applicant should consider all the implications. Some points to consider are listed below:

6.2 What other organisations are already operating in your area? You will need to evidence demand and lack of supply as part of your application. It is important that you understand if there are other organisations offering a similar service or activities in the area and the impact on your

proposals. It may well be the case that the area needs are such that both services are required however, there could be opportunities for collaboration which would reduce your operating costs e.g. through joint marketing or shared occupancy of a building. The Council is keen to promote collaboration and multiple use of buildings to maximise their benefits to the local communities.

6.3 What is the purpose of the CAT application? Are the objectives of your organisation clear and how does your CAT application support these objectives.

6.4 Have you fully considered all the costs and liabilities of operating a building? These include but are not limited to:

- Rent (if applicable)
- Rates
- Electricity, Gas, Water, Oil etc.
- Telephone & Broadband costs
- Insurance – Buildings, contents and public liability
- Repairs
- Staff costs and volunteer expenses
- Proposed refurbishments or building improvements
- Web site development and management
- General administrative costs
- Ensuring equality of access for all (Equalities Act 2010)
- Health & Safety Legislation
- Statutory requirements e.g. planning or building regulations.

6.5 Who will be responsible for day to day management of the building and how will this impact on the core purpose of your organisation.

7. How will your application be assessed?

7.1 The following process will be adopted:

Stage	Who is responsible
Asset identified for community transfer	Local partners and community
Estates team assess the property proposed for transfer against eligibility criteria.	Estates team
If property agreed as suitable for community asset transfer if occupied by a community group they will be invited to apply for a community asset transfer by submitting an application and business plan. If not occupied by a community group the property will be advertised for applications.	Community groups
Applications are assessed against criteria by the Estates Team. If the application meets the criteria a report will be presented to members for decision. If determined that the application does not meet the criteria the applicant will be	Estates Team

presented with feedback and if the asset is surplus the asset will be placed on the open market.	
Decision on proposed transfer	Cabinet / Individual Cabinet Member
If yes, negotiate terms and instruct legal documentation	Councils Estates and Legal Team Community group
Agree legal documentation, monitoring arrangements and agreed outcomes	Councils Estates and Legal Team Community group

