

## **Voluntary Community Asset Transfer**

### **Report by Kevin Anderson, Executive Director Place**

#### **Report for Decision**

#### **1 Recommendations**

Council is asked to:

- (a) Note the terms of this report; and
- (b) Approve a revision to the current practice for Community Asset Transfers (CATs) and allow a voluntary approach to be adopted, where appropriate, as an alternative to the formal process under the Community Empowerment (Scotland) Act 2015.

#### **2 Purpose of Report/Executive Summary**

The purpose of the report is to advise Council that CATs may be achieved by agreement between the Council and community groups without requiring such groups to submit a formal application in terms of the Community Empowerment (Scotland) Act 2015, subject to compliance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and related Scottish Government guidance.

A similar report was considered by the CAT Committee at its meeting of 24 February 2022 when it was agreed to refer the matter to Council for further consideration. This report includes revisions which were suggested by the CAT Committee.

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**Report Contact:**

William Venters, Principal Solicitor, [William.Venters@midlothian.gov.uk](mailto:William.Venters@midlothian.gov.uk)  
Gareth Davies, Senior Manager Property and Facilities Management,  
[Gareth.Davies@midlothian.gov.uk](mailto:Gareth.Davies@midlothian.gov.uk)

### **3 Background/Main Body of Report**

**3.1** On 2 October 2018 Council agreed the arrangements for determining formal requests for community asset transfers made under the 2015 Act as follows:

- (a) all members be notified when a formal application for an asset transfer had been made and be allowed to make representations should they wish to do so prior to a formal decision being made by the Asset Transfer Committee;
- (b) officers (Community Management Assessment Group) would compile a report on any competent bid and the Director, Resources (now Executive Director, Place) would make a recommendation to the Asset Transfer Committee for determination;
- (c) an Asset Transfer Committee be established to consider those applications deemed competent by the relevant officers. The committee would then decide whether to accept, reject or modify the officer recommendations;
- (d) an Asset Transfer Review Committee be established to consider any appeal received from an Applicant as a result of a decision by the Asset Transfer Committee;
- (e) the Asset Transfer Review Committee comprise of 6 named 'Elected Members' (1 from each Ward and who would not be a Member of the Asset Transfer Committee);
- (f) the remaining six elected Members act as a potential Substitute for either of the aforementioned Committees; and
- (g) the Community Asset Transfer Framework to be used for assessing competent bids in terms of Best Value themes.

The report to Council noted that Scottish Government Statutory Guidance on community asset transfer did not rule out the possibility of voluntary agreement between community groups and relevant authorities. Thus, despite the introduction of a statutory scheme, much of the previous best practice in relation to community asset transfer continues to apply.

**3.2** The assessment framework approved by Council recognises that a Community Asset Transfer (CAT) will apply to all transfers of land or buildings from the Council to a community group at below market value and involves the transfer of responsibility for an asset from the Council to a community group by way of either a transfer of management responsibility, short or long term lease or outright ownership. The type of transfer will be dependent on the individual circumstances of the community group and their proposals. In many cases a phased approach to transfer will be appropriate and a community group may start out with a management agreement before moving to a longer term lease or alternatively could move from a lease to outright ownership.

- 3.3** Since October 2018 the Council's practice has been to consider all CAT requests under the 2015 Act thus requiring community groups to make a formal application. This process requires a significant effort on behalf of the applicant and can be disproportionate to the size and nature of the heritable asset to be transferred and it is also time consuming. The process does though ensure transparency in decision making which is a key and important factor. However, a more flexible approach which retains transparency is feasible in terms of the Council's Scheme of Delegation and the 2010 Regulations. Subject to compliance with the 2010 Regulations, if the Council and community group can agree to an asset transfer then it is unnecessary for the community group to make a formal request under the 2015 Act.
- 3.4** On 8 September 2021, officers met with counterparts from Dundee City Council who confirmed their practice of undertaking voluntary CATs in accordance with the 2010 Regulations without going through the formal process in the 2015 Act. In order to ensure transparency in the decision making process Dundee City Council officers reported voluntary transfers to their Development Committee rather than the Community Asset Transfer Committee which only considered formal applications under the 2015 Act.

### **Scheme of Delegation**

- 3.5** In terms of Midlothian's Scheme of Delegation, the Executive Director, Place has delegated authority for:
- (a) negotiating, agreeing and signing all offers to let property where the length of lease is up to twenty five years and where the rent is no more than £25,000 per annum;
  - (b) negotiating and concluding terms to renew or extend leases where it is beneficial to the Council;
  - (c) authorising the assignation of leases where the Council is Landlord; and
  - (d) in conjunction with relevant Cabinet portfolio-holder and Members within whose interest the land or property is held, for property authorised to be sold, market, negotiate and agree terms of sale up to a value of £750,000.

As can be seen, the Executive Director, Place has a wide remit to authorise the disposal of Council property (whether by lease or sale) which includes for less than the best consideration but in doing so must comply with the 2010 Regulations.

- 3.6** The CAT Committee suggested that the Scheme of Delegation might be amended to clarify that the Executive Director, Place has authority to approve small scale community asset transfers within defined parameters. However, to a large extent this is already provided for in the 2010 Regulations, as referred to in Section 3.13 below, which defines the amounts for low or marginal value disposals.

- 3.7** It is important to note that the assessment framework approved by Council recognises that if a community group is looking to improve or maintain an area of Council land and they meet the following criteria then a “light touch” approach can be adopted whereby no detailed business plan is required and such requests can be dealt with under existing delegated powers:
- (a) the site is less than 1 acre in size;
  - (b) there are no major funding requirements; and
  - (c) there is no requirement for planning consent.
- 3.8** Property Services has advised that, in the absence of any wider estate management issues, the key factor in determining whether the voluntary approach is used would be the complexity of the land and buildings in terms of its future maintenance and upkeep.
- 3.9** If it is considered by Property Services that a particular asset can be easily maintained by a community group then the voluntary asset transfer approach could be used. For example, generally pavilions can be considered to be easily maintained buildings as can single storey standalone offices with 1-3 habitable rooms and which do not have complex air handling or linked fire monitoring systems or carry specific risk which requires specialist skill or knowledge.
- 3.10** Buildings, such as leisure centres, would not considered to be easily maintained due to their complex heat/water, air handling, security and alarm systems. Moreover, water tanks and pools which when both filled with water or empty create the risk of accidents occurring. For complex buildings, community groups would be asked to make a formal asset transfer request under the 2015 Act.
- 3.11** Significantly, the voluntary approach could be used to permit rent waivers or reductions to community groups who lease or wish to lease Council assets, subject to the leases containing an appropriate full maintenance, insuring and repairing obligation on the community group.

### **The Disposal of Land by Local Authorities (Scotland) Regulations 2010**

- 3.12** The Regulations make provision for the disposal by local authorities of land and buildings for a consideration less than the best that can reasonably be obtained and apply to the sale or lease or grant of an interest in land, such as a formal right of access.
- 3.13** Disposals are permitted at less than best consideration where either:
- (a) the best consideration that can reasonably be obtained is less than £10,000 (the threshold amount); or
  - (b) the proposed consideration is less than 25% of the best consideration (the marginal amount) ; or

- (c) the local authority has carried out an appraisal of the proposed disposal and is satisfied that the disposal for that consideration is reasonable and it is likely to contribute in respect of the whole or any part of the area of the local authority or any persons resident or present in its area to the promotion or improvement of;
- (i) economic development or regeneration;
  - (ii) health;
  - (iii) social wellbeing; or
  - (iv) environmental wellbeing.

It is important to note that whilst disposals within the 'threshold' and 'marginal amounts' do not require a detailed appraisal in terms of the 2010 Regulations, it is considered this would still be required to meet Best Value and the general fiduciary obligations to council tax payers.

## **Best Value**

**3.14** It is well known that Best Value does not always mean the highest price and Councils can sell or lease land at less than market value where it can be shown that public benefits can be obtained.

**3.15** The Scottish Government has provided guidance on the 2010 Regulations. This emphasises that local authorities are required to fulfil their statutory duties under Best Value as set out in the Local Government in Scotland Act 2003. The 2010 Regulations are consistent with the duty to secure Best Value and relevant aspects include:

- (a) Making the best use of public resources, including land and property;
- (b) Being open and transparent in transactions;
- (c) Ensuring sound financial controls are in place to minimise the risk of fraud or error;
- (d) Assessing the full financial consequences of decisions at an appropriate level before major financial decisions are taken or commitments entered into; and
- (e) Demonstrating responsiveness to the needs of communities, citizens, customers and other stakeholders, where relevant.

**3.16** The guidance advises that all local authorities should have arrangements in place, including schemes of delegation where appropriate, to deal with disposals of land at less than best consideration and that local authorities are expected to be open, transparent and fair in all of their transactions and have regard to subsidy control rules (formerly known as 'State Aid' pre-EU exit). Whilst a discounted price or rent can be regarded as a subsidy it is unlikely any rules would be breached given that such a form of subsidy to a community group would not affect international trade.

- 3.17** The guidance includes an example appraisal which can be used to assist in determining whether the Council should agree to a proposal in accordance with the Scheme of Delegation and 2010 Regulations. This is set out in Appendix C and can be aligned with the Council's Assessment Tool for community asset transfers which was approved in October 2018 and is in Appendix D for ease of reference.
- 3.18** As with formal requests for CATs there needs to be transparency in decision making. Transparency will be enhanced by detailed reporting on proposals to the Executive Director Place for consideration in terms of the Scheme of Delegation. This would be on the basis that reports and decisions are likely to be disclosable under freedom of information rules given the public interest.
- 3.19** Alternatively whilst the proposed asset transfer might be legitimately dealt with under the Scheme of Delegation, it could instead be reported to the Community Asset Transfer Committee for approval. This though would require a change to the remit of the Committee to include the determination of voluntary asset transfer requests with the Committee retaining oversight of all community asset transfers.

### **Process**

- 3.20** Members will be aware that the 2010 Regulations and Best Value need to be considered as part of the consideration of formal applications for asset transfer under the 2015 Act. The same considerations apply for voluntary CATs.
- 3.21** Initial expressions of interest by a community group in an asset together with appropriate supporting information would be considered in the first instance by officers on the Community Management Assessment Group. As with formal requests the supporting information should include evidence of community engagement in order to assess the level and nature of support for the asset transfer within the community.
- 3.22** If the Group considered that a voluntary transfer should be pursued then relevant officers would prepare a delegated authority report for the Executive Director, Place to consider under the Scheme of Delegation. The report would be based on the appraisal and assessment tool referred to in section 3.17 above and reference the nature and extent of community support for the proposal together with the legal terms and conditions of the transfer, which are necessary to protect the Council's interest. Essentially, similar considerations would apply as with formal asset transfer requests.
- 3.23** The Executive Director Place would consult with the members in the ward in which the property is located in deciding whether or not to approve a proposed voluntary transfer. Once the proposal is approved relevant officers would be instructed to proceed with the asset transfer to the community group.

- 3.24** In order to aid transparency the reports and decisions in relation to voluntary asset transfers could be posted on the Council's website in the Community Asset Transfer section.
- 3.25** The existing resources and processes that are in place for consideration of applications made under the 2015 Act can be adapted for the voluntary asset transfer approach.
- 3.26** In the event that it was not possible to agree to an asset transfer on a voluntary basis then the community group still retain the right to make a formal application under the Community Empowerment (Scotland) Act 2015.

#### **4 Report Implications (Resource, Digital and Risk)**

##### **4.1 Resource**

It is anticipated that consideration of potential voluntary asset transfers can be done within the existing resources and processes which are in place for formal applications under the 2015 Act.

A key part of the Council's financial strategy is the rationalisation of land and buildings. Adopting a voluntary approach to community asset transfer would support that strategy.

##### **4.2 Digital**

None

##### **4.3 Risk**

None

##### **4.4 Ensuring Equalities (if required a separate IIA must be completed)**

This report falls within the scope of an existing IIA contained within Appendix 4 of the report to Council in October 2018 and supports the equalities outcomes of the Single Midlothian Plan.

##### **4.4 Additional Report Implications (See Appendix A)**

See Appendix A

#### **Appendices**

- Appendix A – Additional Report Implications**
- Appendix B – Background information/Links**
- Appendix C – Example of Criteria**
- Appendix D – Scoring Template**