

Wiltshire Council

Cabinet

14th September 2010

Subject: Property Sales

Cabinet member: Toby Sturgis - Waste, Property and Environment

Key Decision: No

Executive Summary

1. There is an urgent need to review the existing governance structure for monitoring property sales and decision making. It is proposed that as most of the Council's sales in the short and medium term relate to Workplace Transformation Programme (WTP), then the WTP Board is best placed to perform this role in line with previous Cabinet decisions
2. There are a number of further issues upon which officers request direction from Cabinet relating to the Council's internal processes for property sales; the role of Area Boards within this and the terms of any community asset transfer; and how to deal with 'off-market' disposals should these arise.

Proposal

3. It is recommended that:
 - i. The WTP Board becomes the forum for operational approval of strategic sales and the monitoring of all property disposals recognising that non strategic disposals will be approved by the Area Boards where these do not conflict with the Council's Constitution.
 - ii. Cabinet approves the processes and principles outlined in this report.

Reason for Proposal

4. To provide a governance structure compatible with the delivery of the objectives of the new Council.

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Purpose of Report

1. To invite Cabinet to review the governance and processes in respect of the disposal of property assets.

Background

2. Prior to the formation of Wiltshire Council each of the former District and County Councils had their own process for dealing with the disposal of surplus property assets.
3. Whilst those systems worked well for those organisations, none of them were designed to deal with the quantity of disposals envisaged by Workplace Transformation Programme (WTP) and the revised Corporate Plan.
4. In addition there are a number of issues that need consideration in relation to the underlying principles in connection with property disposals which have arisen following the formation of the Unitary Council.

Main Considerations for the Council

Governance

5. It is important to ensure that neither the work of Cabinet nor its Member for Property, is distracted by the many issues that are bound to arise through the Council's substantial property disposal programme and that decisions can be taken in a timescale that reflects the current market conditions.
6. The WTP Board will receive regular highlight reports from Strategic Property so it can be satisfied that the targets for capital receipts, revenue savings, and carbon reduction are being achieved. Where necessary these reports will identify any issues arising from the various other workstreams that may have an impact on the disposal programme, and vice versa.

7. It is therefore appropriate that the WTP Board widens its performance monitoring to all property sales. It is further recommended that the WTP Board should have delegated decision making powers in respect of property so far as the Council's constitution permits and that such decisions accord with the Council's Corporate Policies and approved capital budget.
8. Cabinet has already approved the requirement for the WTP to submit a quarterly update report to Cabinet and the WTP scrutiny task group. It is proposed that this report includes an appropriate formal update on property sales and disposals. There may be instances where information on a particular property is commercially sensitive in which case only that element of the report would be considered as a confidential item.

Sales Process

9. Currently, when a property ceases to be used for its existing purpose, then prior to it being declared surplus, its availability is circulated to all Service Directors with an indication as to whether it has previously been approved for disposal by the Council.
10. If one or more Service Directors, registers an interest then it is recommended that the WTP Board should consider the operational benefits of such a request(s) together with all financial implications. In this respect, the Service Director must be able to demonstrate that the Corporate goals that are achieved by the proposed use outweigh benefits to the capital (or WTP) programme of maximising the capital receipt.
11. This will enable the Council to take advantage of opportunities to make the most effective and productive use of its assets whilst recognising the requirement within the Corporate Plan to increase the overall level of capital receipts.

Community Asset Transfer Policy

12. If there is no operational requirement for the property, then in accordance with the report to Cabinet in December 2009 on Community Asset Transfer Policy, elected Members of Area Boards are informed of its potential availability.
13. The policy allows elected Members 3 months to consult, usually through Area Boards, to ascertain whether there are any community uses to which the property can beneficially be put.
14. However, where a property has a substantial value and is ring-fenced to fund WTP or a specific corporate project, this Policy could potentially

delay a sale, and also raise expectations when there is little chance that Cabinet will be in a position to approve a community use.

15. Accordingly, it is suggested that in such cases Area Board elected Members are informed if a surplus property has been identified to fund a strategic corporate project, or if it has a value in excess of, say, £250,000.
16. It is recommended that a similar approach should be taken where property is being sold to a third party to deliver a corporate policy or statutory function such as affordable housing.
17. The December 2009 Cabinet report encouraged Area Boards to prioritise community projects and in such cases Council officers will be pro-active in exploring ways in which such schemes can be delivered.
18. For the sake of clarity, under the Cabinet resolution on strategic properties, elected Members of Area Boards cannot approve or reject community proposals, only recommend Cabinet to do so. Area Boards can make decisions on non-strategic properties.
19. In order to reduce the workload on Cabinet and to speed decision making, it is suggested that decisions on all applications relating to strategic properties should be delegated to the WTP Board within the framework of Corporate Plan and Cabinet approved budget requirements.
20. There would be a presumption to reject applications in respect of properties that have been ring-fenced for strategic projects, including WTP, given that the disposal of these properties has in effect been approved by the setting of the Council's budget and the receipt will have been an intrinsic part of the overall funding proposal approved by Cabinet.
21. While the transfer and disposal of all *strategic* assets will be referred to Cabinet or the WTP Board, the majority of applications in respect of the disposal of non-strategic assets with a value below £250,000 will be referred for decision to the Area Boards provided they are supported by robust and appropriate business cases that benefit local communities.
22. Consideration also needs to be given to the terms of any Community Asset Transfer.
23. Where the property concerned is land, in order to be consistent then this should be transferred to the community group (including Parish or Town Councils) on the same terms as those which were passed across to Salisbury City Council.
24. These contained a condition that the property can only be used for community purposes, the definition for which is very broad. There is a

further condition that if the community group serves notice that the land has ceased to be used for community purposes then it immediately transfers back unfettered to the Council at nil cost. This clause protects long term public access and benefit from the asset and is known as a “reverter” clause,

25. If the asset is no longer required for a Community use, Wiltshire Council then has 5 years to secure planning consent, funding, and to use the property for a statutory purpose. If it does not do so then the Council will sell the land and the net proceeds of sale will be shared equally between the Council and relevant party. The sharing of the sale receipt should only apply where the community group is a local Council other than in exceptional circumstances.
26. However, the situation is more complex where the surplus property is a building.
27. The imposition of such a condition in a transfer is likely to inhibit the community group from raising finance or grants secured against the asset, which would undermine the principle of creating sustainable community assets
28. Accordingly, to support a community project an alternative to imposing the ‘reverter’ condition would be to allow the funding identified in the Group’s business plan to be first call on the proceeds of any future sale.
29. There will be instances where the reverter clause, even if it is subject to a funder’s first call, could act against the spirit of the Community Asset Transfer Policy. For instance over time the property could become obsolete or too small for its intended purpose, and the Group wants to use the sale proceeds for replacement premises.
30. In such cases the clause could be written in such a way as to allow for the reverter to be passed across to the replacement property.
31. Another example is that a local Group might have funded substantial repairs that increase the value of the property but its project subsequently fails. The Council may wish to consider on an individual case basis whether the ‘additional’ or possibly the entire value of the asset should remain available for other identifiable capital projects in the local area.
32. It should be noted that Wiltshire Council has inherited from all the previous authorities a number of buildings that are leased to local councils, community and charitable organisations.
33. These leases are on varying terms in respect of rent and repairing obligations.

34. In light of the legal responsibilities placed on the council as a 'corporate landlord' work is on going to analyse the various terms and conditions in existing leases. Where possible these will need to be restructured to be consistent with the policy proposals being developed by WTP for sustainable and appropriate use by partners of the estate.

Open market sales

35. If there is no operational or community requirement for a 'surplus' property, then in the vast majority of cases these will be sold on the open market.
36. The property market is currently in a depressed state over many sectors. Accordingly, officers in Strategic Property are exploring innovative methods of disposal to secure the best price, as well as stimulating social and economic development.
37. For instance in respect of some development sites consideration is being given to helping developers' cash flow by potentially funding infra-structure or foregoing the land value in return for a percentage of the sale price of the finished product, thereby benefiting from any future inflationary rises.
38. A further report will be submitted to Cabinet on innovation including the above and similar joint ventures at a future date.
39. In the majority of cases, it is better to sell development sites on the basis that the purchaser secures planning consent rather than the Council submitting an application to its own Regulatory Committee and this is the approach that is currently being taken.
40. This will mitigate any perception amongst objectors of any Council bias.
41. As part of this, the Council will, where appropriate, include a planning brief to accompany the sales particulars. Such a brief will not go beyond Local Plan Policies without the approval of the WTP Board, which if forthcoming would lead to the sale being conducted through the European Procurement Regulations.
42. Where there is considerable interest in a property, the Council normally invites potential purchasers to tender an offer by a specified date.
43. Any subsequent offer after the closing date by any of those original bidders is rejected as the invitation is to submit their **best and final** offer.
44. However, the former County Council experienced a situation where there was keen interest in a house. Potential purchasers were invited to tender as set out above.

45. Shortly after the best offer had been accepted, another potential purchaser submitted a higher bid. That bidder had not previously been in a position to submit a tender as he had not at that stage sold his house to finance the transaction.
46. As contracts had not been exchanged, the Council was obliged to consider the subsequent bid to comply with S123 of the Local Government act, obliging it to obtain the best price possible.
47. Therefore both parties were invited to sign a binding contract, inserting their final bid, by a specified date with the Council accepting the highest price. This became adopted as policy by the former County Council and was known as the 'Durrington' procedure.
48. Council officers try to ensure that such situations are rare by ensuring that all legal documents are available when properties are offered for sale, so far as this is possible. It is recommended that Wiltshire Council continues with the previous County Council approach which is in line with the LGR regulations remains in force unless subsequently changed by Cabinet.

Off-market sales

49. There will be rare occasions where there are benefits in dealing with only one interested party. This may be to a special purchaser (usually the owner of adjoining land thereby generating 'marriage' value) which could not be matched through an open market disposal.
50. Another instance may be where there are clear regeneration or welfare benefits in dealing with one party alone to achieve a specific policy objective of the council.
51. In both circumstances, if there is an 'off market' sale proposal, the WTP Board should not make the decision but submit recommendations to Cabinet, so there is a specific audit trail.
52. An exception may be where there is only one conceivable purchaser, such as a householder wishing to acquire adjoining land to extend his/her garden.
53. Officers are receiving a considerable number of such approaches from house owners which impacts on staff time and Council resources when the priority is to deliver the WTP and other corporate projects to support the Corporate Plan. It is acknowledged that to dismiss such requests is incompatible with the Council's promise of 'Wiltshire where everybody matters'. The WTP Board will be asked to consider an operational policy to address such approaches.

54. Work is continuing on this matter, and accordingly, it is suggested that all such requests are put on hold temporarily. During that time officers will obtain tenders from consultant lawyers and valuers to deal with such requests for a fixed fee. Assuming that Service Directors and the elected Members of the appropriate Area Board have no objection to the sale, then the applicant will pay the valuer's fee in advance. The Council will undertake to sell at the valuation price. The fee is non-returnable if the value transpires to be unacceptable to the applicant. The same would apply in the respect of the lawyer's fee in the event that the applicant withdraws. It will be necessary to consult Area Boards on the above operational approach.

Environmental Impact

55. This is a policy report which does not have any direct environmental impact. There may be environmental issues connected with some specific proposals but these will be dealt with as part of the individual assessment of each case. The sales linked to WTP will specifically reduce the Council's Carbon emissions as the properties disposed of will, in the main, be either redeveloped to modern standards or be put to more suitable (and less Carbon intensive) uses than is currently the case.

Equalities Impact

56. When considering a community asset transfer, the Council will need to ensure that any asset transferred will be legally compliant in relation to the proposed purpose and fully compliant with accessibility and other equalities considerations.

Risk Assessment

57. The proposals will improve governance in relation to the sales process thereby mitigating the risk of any legal challenge.

Financial & Legal Implications

58. The Capital Programme has been structured to reflect the receipt of £17.5m from the office rationalisation element of the WTP programme.

CARTON BRAND

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Background Papers

Unpublished documents relied on - None