

# KENNET DISTRICT COUNCIL

Meeting to be held on Tuesday, 23<sup>rd</sup> October 2007

## THE TRANSFER OF COUNCIL-OWNED ASSETS TO PARISH AND TOWN COUNCILS

### Report by the Director of Resources

#### 1. Introduction

The purpose of the report is to make recommendations concerning a policy for the possible transfer of some Council assets to parish and town councils for a nil or nominal value.

#### 2. Financial Implications

The financial implications arising from any policy to transfer assets to town and parish councils can not be determined until the details of individual cases are individually assessed. However, the financial implications would not be significant if the policy recommended in this report was to be adopted.

#### 3. Staffing Implications

None apart from potentially increasing workloads.

#### 4. Legal and Risk Management Implications

Currently, Section 123 (1) of the Local Government Act 1972 permits the disposal of land held by the Council in any manner they wish, subject to the requirement that the Council must not dispose of any land for a consideration less than the best that can reasonably be obtained.

However, the General Disposal Consent (England) 2003 removes the requirement for local authorities to seek specific consent from the Secretary of State, for disposal of land where the difference between the **unrestricted value** of the land to be disposed of and the consideration accepted by the Council is £2m or less, where the disposal of the land assists in the improvement of the economic, social or environmental well-being of its area.

The term unrestricted value is important. It is not necessarily the value of the asset as it is currently used. Rather the valuation of the land should take account of whatever uses might be permitted by the local planning authority insofar as these would be reflected by the market rather than having regard only to the use or uses intended.

For the future, Clause 24(1) (a) of the Local Government and Public Involvement in Health Bill provides that the Secretary of State may direct that from a date specified in that direction, (probably December 31<sup>st</sup> 2006) that an authority subject to being dissolved may not without the written consent of a person specified, (probably the Joint Implementation Committee that will oversee the move to the new unitary authority) dispose of any land if the consideration exceeds £100,000. If the Bill is enacted as it stands, therefore, there would be no obstacle to the transfer of land at a nil consideration. However, the same clause 24 gives the Secretary of State the power to vary the monetary rules and applicable dates included in Clause 24 as described above. Therefore, the Council, and indeed the parishes and town councils, would have to accept that there could be a retrospective or future decision to withhold consent, (because of a “moving of the goalposts”) and any sale may breach the Direction issued under Section 24. In that event any transfer of an asset now to the parish towns may at a future date be held to be not binding on the new authority and the asset would then revert to the ownership of the new authority. Of course, the assets will belong to the new authority anyway if the Council does nothing, so such an outcome would place this Council and the parish and town councils in no worse position than they are now except that both sides will have wasted time and some money on legal and valuation fees.

In short there is no legal obstacle to transferring land at nil consideration provided the well-being and value rules are followed, but there is a risk that transfers may be “reversed” if the rules change.

## **5. Introduction**

Some parish and town councils have formally or informally requested that the Council consider transferring assets to them, and the Council needs to make a judgement on whether or not, in principle, this should happen. If the Council was minded to consider individual requests for asset transfers then it would need to agree a policy and procedure for so doing.

## **6. Suggested Policy and Procedure for the Transfer of Kennet-Owned Assets to Town and Parish Councils**

In the first instance the Council should invite expressions of interest from all the town and parish councils in respect of specific assets they would in principle wish to acquire. Even at this stage the parish and town councils will need some guidance as to which assets the Council might transfer.

The guidance should, in my view, state that:

1. only assets which are important locally for the social, environmental or economic wellbeing of the particular parish or town council will be considered; and

2. only assets that do not generate a significant income flow will be considered; and
3. where assets do generate an income flow this is, over the medium to long-term, likely to be exceeded by the cost of maintaining the asset; and
4. the value of the asset does not exceed £2 million, the value to be determined by reference to its unrestricted value as defined at section 4 of the report above.

Upon receipt of any formal expressions of interest, the Council's officers should then research the actual, annual costs of providing the asset, and give a professional judgement on the likely future maintenance or replacement costs of the asset over a ten year period following the transfer. In addition any other matters should be brought to the attention of the relevant town or parish council which might reasonably be supposed to have a bearing on a choice whether or not to accept a transfer of an asset. This information should then be communicated to the relevant parish and town councils to ensure that they are aware of the financial consequences of taking a transfer of the asset.

If, in the light of the information concerning costs and any other relevant matters, parish and town councils wish to continue with a transfer, then individual assets would be subject to the following process:

- A. The Planning Services Manager would issue an opinion on what uses might be permitted by the local planning authority, having regard to the existing planning policies of the Council that affect the asset under consideration.
- B. The Council's external property adviser would give a formal opinion of value for the asset based on the most valuable use of the subject asset in accordance with the Planning Service Manager's opinion, to ensure that the value does not exceed £2m, and in order that the Council should, as it must, be aware of the value of the asset which it might transfer.
- C. A report on any possible asset transfers be prepared for consideration by the Council's Resources Executive Committee that provides the information at (A) and (B) and gives an assessment of whether, in the opinion of the officers, the transfer of the asset would be in the social, environmental or economic interests of the community, and any other relevant matters. Such reports would also make a recommendation on whether or not to carry out the transfer.

Members may feel that leaving out assets that generate significant income flows would not be appropriate. However, leaving aside any issue that transferring assets with significant income flows would damage the finances of the local authority charged with looking after the residents of Kennet in the future, there is an immediate practical consideration. To deliberately transfer assets that would impact significantly on the finances of the unitary authority would almost certainly, in my view, lead to a revision of the Direction issued by the Secretary of State to prevent this from happening. That in turn might well prevent the transfer of any assets to the parish and town councils, even if

they are of no great financial consequence to the unitary authority but are important to the parish or town council concerned.

## **7. Other Matters**

Because of issues of conflict of interest both parties to the transfer should instruct their own solicitors.

Transfers should be made without covenants as to their future use so that the relevant parish and town councils have all the benefits of owning the asset as well as all the liabilities.

The question has been raised in respect of asset transfers as to whether the Council should provide a “dowry” when an asset is transferred to take account of future maintenance liabilities. There are no statutory powers to do this now and it would be positively ruled out when the Local Government Bill becomes law.

## **8. Conclusions and Recommendations**

A number of parish and town councils have approached the Council about the possible transfer of assets to them. There is currently no legal obstacle to the transfer of assets to parish and town councils at nil value. However, any suggested transfers should be subject to robust policy and procedural guidelines.

It is therefore **RECOMMENDED THAT:**

- 1. a policy of transferring assets to parish and town councils at nil value be adopted;**
- 2. the policy framework for such transfers should be as set out at bullet points (1) to (4) of part 6 of this report;**
- 3. the procedure for dealing with requests for transfers be as set out at bullet points (A) to (C) of part 6 of this report;**
- 4. transfers should be made without restrictive covenants, both parties should meet their own legal costs, and no dowry should be payable upon the transfer of any asset.**

Director of Resources