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REPORT

Cllr Mrs Warrander: Cabinet Member for Resources

A FRAMEWORK FOR EVALUATING OCCUPATION OF COUNCIL PROPERTY BY OTHER PUBLIC SECTOR BODIES AND COMMUNITY GROUPS

1. Report Summary:

To consider the introduction of a framework for dealing with the occupation of Council property by other public sector bodies community groups and charities ['non commercial undertakings'].

2. Background:

2.1 The Council has a fiduciary duty to its taxpayers to ensure that its property is used in their best interests.

2.2 Subject to certain exceptions the Council is legally required to obtain the best price reasonably obtainable when granting any interests out of its property portfolio.

2.3 One of the key service improvements options for action identified in the Service Continuous Improvement Plan for the Best Value Review of Support Services was to "overtly show subsidised rents included within leases to community groups and publish as part of community grants".

2.4 The recommendation was made against the background that:

- The Council has not historically had any formal policy for dealing with the occupation of its property by non commercial undertakings which has meant that each situation has been dealt with on an ad hoc basis
- There is evidence that historically Council property has been used as a form of subsidy
- An informal approach can expose the Council to a range of risks that relate to the financial legal and/or property management aspects of the arrangement

2.5 The objectives of the Council's Asset Management Plan ['AMP'] envisage amongst other things that non commercial undertakings may use Council property where:

- 'Joined up' services are to be provided
- a service is to be provided that complements any of the Council's services
- a service is to be provided that would otherwise be provided by the Council

3. Issues:

If the Council is to ensure that it does not enter into arrangements which will be to the detriment of its property portfolio then the following matters should be considered:

- Formalisation of all arrangements with non commercial undertakings whilst at the same time ensuring that such arrangements will not unduly impact upon the Council's future flexibility
- Charging appropriate rental levels with any concessions explicitly separately dealt with by way of grant funding
- Incorporation of any necessary capital expenditure into agreements
- Separation of property agreements from [but attached to] service agreements
- Co-ordination of all agreements within the Council

4. Options:

4.1 Option 1: charge market rent and explicitly identify any subsidy

4.1.1 Grant funding would need to be equivalent to the market rent or that part of it foregone by the Council.

4.1.2 However grant funding is made on annual basis and funding would not be guaranteed beyond one year unless funding was provided as envisaged by the option referred to in 2.3 above.

4.2 Option 2: charge market rent and require service level agreements in all cases

4.2.1 The value of the services to be provided should be equivalent to the market rent or that part of it forgone by the Council.

4.2.2 However:

- The provision of services may depending on their value have to be subject to tendering
- In practice it could be extremely difficult to calculate the value of the services to be provided
- The service provider may not be able to guarantee service delivery in future years

4.3 Option 3: charge market rent subject to an exception for concessionary arrangements in certain circumstances

4.3.1 Any policy would need to be robust and robustly applied to avoid use of the exception as a matter of course.

4.3.2 The Council could be open to criticism of unfair and/or anti competitive behaviour.

5. Framework for consideration:

The following is a suggested framework for evaluating occupation of Council property by non-commercial undertakings:

General

5.1 Before any arrangement is entered into a business case is prepared which includes:

- A statement on how what is proposed meets the Council's priorities
- Consideration of the future flexibility of the specific property involved and the effect that the arrangement may have on the ongoing management or future disposal of that property

5.2 All interests to be approved in accordance with the existing constitutional arrangements

5.3 All property agreements are separated from but attached to any service agreements.

5.4 All arrangements are anchored by a lease in respect of which a court order excluding security of tenure has been obtained or by a licence which does not benefit from any statutory security of tenure.

Concessionary interests

5.5 Leases and/or licences may be granted at a rental/periodic payment that is less than open market value [a concessionary interest] in accordance with the objectives of the AMP other than to:

- Government funded organisations [who should seek funding from their sponsoring department]
- Other local authorities [who should be covered by joint financing arrangements]

5.6 A business case is prepared for any proposed concessionary interest. The value of the concession must be justified by the expectation that any financial loss will be matched by an equivalent financial service or 'well-being' benefit.

5.7 Before the grant of a concessionary interest a full financial appraisal is made which includes:

- A current open market valuation
- A statement of the reasons for recommending a concessionary interest including an evidenced justification of why any or the full rent/periodic payment cannot be paid
- A calculation of the value of the concession
- Evidence that funding is not available from any other source.

5.8 All concessionary interests to be approved by

- Cabinet where the value of the concession is greater than [say] £5000 per annum and/or £50000 throughout the lifetime of the interest granted or where a Member so requests
- Management Team or as delegated by Management Team in all other cases

6. Consultation Undertaken:

It is suggested that consultation on the proposed framework should be via the following:

- South Wiltshire Strategic Alliance
- Community First
- Charities Information Bureau
- Area Committees

7. **Recommendations:**

7.1 Cabinet resolve to approve the proposed draft framework for consultation

7.2 Cabinet resolve to approve the proposed consultation arrangements

8. **Background Papers:**

'Whose Property is it anyway': a review of the use of local authority property by third parties by the Royal Institution of Chartered Surveyors held in Legal and Property Services

9. **Implications:**

- **Financial:** none at this stage other than any committed to the costs of consultation
- **Legal:** none at this stage
- **Human Rights:** none at this stage
- **Personnel:** none other than the resources needed to carry out consultation
- **Community Safety:** n/a
- **Environmental implications:** none
- **Council's Core Values**
 - providing excellent service
 - supporting the disadvantaged
 - promoting a thriving economy
 - being fair and equitable
 - wanting to be a willing partner
- **Wards Affected:** District wide