

Agenda Item 10

Executive Board

30 April 2008

RP



Community asset management – disposals to parish and town councils

Summary

Members are asked to consider a policy on the devolution of assets to parishes where consistent with the Council's strategic objectives and where there is demonstrable community benefit in doing so.

Recommendation

1. That where a parish or town council approaches the Council with a case for Council assets to be transferred, leased or managed by them, consideration of the community benefit of the proposal be given as set out in this report.

2. That the Portfolio Holder (Resources) be given authority to dispose of assets to parish and town councils, in consultation with other relevant Portfolio holders and ward members, in line with this policy and subject to the assets having an open market value of no more than the current limits set out in the General Disposal Consent (England) 2003 Order

a) **Reasons for Recommendation**

To promote the council's community strategy, work in partnership with parish councils and devolve services.

b) **Alternative Options**

Not to agree the proposal.

c) **Risk Considerations**

That assets are transferred but no community benefit is delivered

d) **Policy and Budgetary Considerations**

Where assets are transferred for a nil or less than market consideration, there will be a financial cost to the council which will need to be weighed against the community benefit which can be delivered.

Positive Impact Overall

Safe Environment.

Clean Environment.

Green Environment.

Excellent Customer Service.

Inspirational Council.

Meeting our crime and disorder duties.

Meeting our Diversity and Equality duties.

e) Date for Review of Decision

March 2010

1. Background – The Corporate Strategy

Its overarching aims are to:

1. Achieve thriving, balanced communities
2. Take care of and improve our environment
3. Encourage a flourishing local economy
4. Provide community leadership and good value for money, customer focused Services

Asset management forms a key part in providing local services where, when and how local people want them. The location and accessibility of services is crucial to their take up. Community engagement with town and parish councils is an important part of East Devon's work.

Asset management provides a considerable challenge in a large rural area such as East Devon, for example the travel time involved in maintaining small areas of amenity land.

Passing land or buildings to parish councils where a case is made for effective, local, responsive management is one means of achieving this.

2. The Council's approach to asset management.

Land and buildings are a community asset. Currently the Council is seeking to maximise their potential on the larger scale through major regeneration projects, particularly in Exmouth and Seaton., and in delivering affordable housing, as well as on the local, parish level. Parish councils are producing parish plans, which may include, for example, proposals for the future needs of the community in terms of recreational and community facilities. Working in partnership with parish councils and third sector groups includes recognising that their contribution to asset management may be in terms of volunteered time and skills to manage and maintain an asset or project, rather than the provision of capital assets, which is more easily carried out by public authorities or the private sector.

Through the Asset Management Forum, an officer and member working group, and the Use of Assets Task and Finish Forum, the Council has developed a strategic approach to considering land disposal and development so the impact and cost-benefit of proposals for the whole of East Devon is fully evaluated before a decision is taken. The Scrutiny Committee supported this approach at its meeting on 2 April and endorsed the involvement of ward members in the process.

3. Proposals for Parish and Town Councils.

The Council has for some time been in dialogue with town and parish councils about their interest in using more of the statutory powers which are available to them, and in developing their role as service providers. Some councils have expressed interest in expanding their role – as envisaged in the government's 'double devolution' policies; others feel they are too small to take on more responsibilities. Others are worried about the costs of providing services, including possible impact on their local precepts and whether EDDC or other larger councils would be able to help them with funding.

In terms of asset management, there could be mutual benefit in considering the transfer of land and buildings to parish and town councils where:

- a) the transfer of the asset would improve the quality of life of local residents, for example through the ability to manage and regulate an open space at local level.
- b) the transfer would be a 'tidying up' exercise, passing small pieces of land to local level.
- c) the land has the potential to provide for a community facility, for example a village hall, which the parish has demonstrated they have the skills, drive and access to resources to deliver this.
- d) a community partnership can be entered into based on public access to and use of an asset

Assets would not be transferred where:

- a) They are needed for wider strategic objectives
- b) The parish could not afford to run the asset or provide the service in a satisfactory manner, taking into account the whole life costs of the project.
- c) The financial cost to the Council was not balanced by equivalent demonstrable community benefit.

In many cases the land will have little value, for example small grass areas currently maintained by the council which could be taken over and cut by the parish; similarly public toilets. In others it may have value but need to be transferred at an undervalue if the community project is to be viable. The Council has legal powers to do this in most cases-see legal implications. The valuation process will need to be carried out and recorded by the surveying staff in the normal way. Where land or buildings may ultimately have development value the Council is advised to impose covenants to safeguard its interests as appropriate.

4. The effect of local government review.

While we will not know until January 2009 from the Boundary Committee whether East Devon is to be reorganised in whole or in part. The ability of any council subject to reorganisation to manage its property assets is normally restricted by parliamentary order long before the transfer date. Therefore, if the Council wishes to continue to move along the partnership/devolution route with parish councils in terms of asset disposal, an approach needs to be agreed now, so that any plans are not placed in limbo by local government reorganisation.

5. A possible way forward

It is proposed to use existing council processes to consider disposals to parish councils, through the Asset Management Forum, with delegation on the decision to the Portfolio Holder (Resources). This will enable one portfolio holder to keep a strategic overview of the process, while consulting other relevant portfolio holders.

Legal Implications

Under Section 123 of the Local Government Act 1972, a council cannot, except with the consent of the Secretary of State, dispose of land otherwise than by way of a short tenancy, for a consideration less than best that can be reasonably obtained.

For the purposes of Section 123 a disposal is a disposal by way of a short tenancy if it consists of:

- a. of a grant of a term not exceeding seven years, or
- b. of the assignment of a term which at the date of the assignment has not more than 7 years to run.

In addition to giving consent in specific cases, the 1972 Act authorised the Secretary of State to issue General Disposal Consents covering particular types of cases. The council has discretionary power under the General Disposal Consent (England) 2003 and S.123 of the Local Government Act 1972 to consider disposals of surplus assets at less than best consideration where such a disposal is likely to contribute to the promotion or improvement of the, economic, social or environmental well-being of East Devon's area, or its residents. [Background Document 1].The difference between the unrestricted value of the property to be disposed of and the consideration for the disposal must not exceed two million pounds, a ceiling which is much higher than is necessary for the type of disposal under consideration in this paper.

The unrestricted value is the amount that would be paid for the property if the vendor did not impose any additional conditions or restrictions (or it is the value of the property subject to a lease without restrictions). Conversely the restricted value is the value of the property having regard to the terms of the proposed transaction, that is taking into account the effect on value of any voluntary conditions added by the vendor.

Voluntary conditions would include any terms that the vendor imposes on the purchaser such as a restrictive covenant, a requirement to undertake works etc. It also includes the value of any benefits to the Council as a result of the sale, even by a related transaction, such as a saving on the cost of providing a service that is externalised.

Where there is a disposal at an undervalue the Council's valuer shall certify whether and how the proposed disposal is likely to contribute to the promotion or improvement of the social, economic or environmental well-being of the Council's area, and the true opportunity cost. This will be the unrestricted value of the property being disposed of less the actual receipt. The General Disposal Consent requires these values to be expressed in capital terms.

There are a limited number of circumstances where the General Disposal Consent will not apply. These include:

- housing land
- open space land, where additional requirements apply
- land under specific statutory powers that preclude sale under Part 7 of the Local Government Act 1972

Where land or buildings may ultimately have development value the Council is advised to impose covenants to safeguard its interests as appropriate. Existing delegations to Portfolio Holders enable them to approve acquisitions, disposals and leases where in accordance with the policy framework and subject to relevant terms and conditions being negotiated by the Head of Property and Economic Development.

Financial Implications

No financial implications at this current stage. Any disposals would need to be considered on their individual merit once a decision on local government reorganisation is reached.

Consultation on Reports to the Executive

None

Background Papers

- [Background paper 1] Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003: disposal of land for less than the best consideration that can reasonably be obtained [Departments for Communities and Local government]. Available on DCLOG website.

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Executive Board

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30 April 2008

