

Report to: Cabinet

Date: 1 July 2019

Title: Enabling the development of Community Assets – Market Tower and 2 Fisher Street

Report of: Ian Fitzpatrick, Director of Regeneration and Planning

Cabinet member: Councillor Joe Miller

Ward(s): All

Purpose of report: To seek a decision about the future of two assets within Lewes - Market Tower and 2 Fisher Street and to outline the rationale for developing a Community Assets Policy for the Council.

Decision type: Key

Officer recommendation(s):

- (1) For Cabinet to agree in principle to disposal of the freehold of Market Tower and 2 Fisher Street to Lewes Town Council.**
- (2) To delegate authority to the Director of Regeneration and Planning in consultation with the Chief Finance Officer and the Portfolio Holder for Regeneration and Growth to agree the final disposal terms subject to:**
 - (i) a red book valuation undertaken by a qualified person for both assets, and**
 - (ii) further legal due diligence and exploration of the potential for including restrictive covenants controlling the future use of the properties and overage clauses enabling the Council to share in any future increase in value in the properties realised after the properties have been sold.**

The scope of the delegation to the Director to include the potential for disposal at an under value in accordance with circular 06/03 where it is considered that this will help to secure the promotion or improvement of the economic, social or environmental well-being of the Council's area.
- (3) To authorise the Director of Regeneration and Planning on consultation with the Chief Finance Officer and the Portfolio Holder for Regeneration and Growth to undertake all actions required to complete the disposal of the properties above including authorising completion of legal documentation.**

(4) To note that a further report will be submitted to Cabinet in the Autumn of 2019 setting out the Council's approach and policy towards community assets.

Reasons for recommendations:

(1) To provide community groups and Town and Parish councils the ability to manage their own estate therefore enhancing the opportunity for them to achieve inward investment and development whilst relieving pressure on the Council's limited resource.

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1 Introduction

- 1.1 Devolution Committee has the remit to consider devolution of open spaces and provide recommendations to Cabinet. Through this process Lewes Town Council (LTC) has requested the freehold disposal of two assets within Lewes – Market Tower and 2 Fisher Street – to the town council. As freehold disposal of property is outside the remit of Devolution Committee and LTC is keen to progress this matter at the earliest opportunity, this proposal is being brought before Cabinet for consideration.
- 1.2 The Cabinet outlined its property strategy within the adopted Corporate Asset Management Plan, produced against a backdrop of reducing Government funding and the changing role of the Council as custodian of its communities. The plan sets out how the Council will challenge the reasons for holding assets (Asset Challenge) to ensure that only those assets that support the aims of the Council's Corporate Plan combining social, cultural environmental and economics benefits are retained.
- 1.3 The Council wishes to ensure that it is protecting the heritage of the town, but it is also highly supportive of enabling others embedded within the community to have control and the ability to develop their own business plans and attract inward investment where this will further the aims of the Council and its communities. In a challenging financial context community groups and town and parish councils have to be flexible and fast to react and engage with funding opportunities, this is often far simpler for them when ownership of the assets sits within their own governance. It is therefore prudent to consider freehold disposal of property assets as part of an Asset Challenge process, where appropriate.

2 Proposal

2.1 Market Tower

- 2.2 The property is Grade 2 Listed, of historical significance and occupies a prominent location within Lewes. The Tower was built in 1792 and houses the town bell 'Gabriel'. The bell originally hung in the tower of the old Church of St

Nicholas, which stood on the site of the war memorial. It was removed on the demolition of the church in 1761 and placed in the new tower in 1792.

- 2.3 The property currently houses a weekly 'Lewes Friday Food Market' run by Lewes Local CIC, as well as monthly craft market, for which the Council receives £1350 rent per annum. In addition, LOS Musical Theatre have rehearsal space within the property for which the Council receive £3150 rent per annum. The Council retains liability for external repairs and maintenance and communal areas.
- 2.4 LTC wish to acquire Market Tower to further its prominence as a Lewes landmark historic building, and also to develop the community use of the building. The town council have previously drawn up plans for a refurbishment and modernisation of the property to use it to link the High Street to The Needlemakers and West Street car park in order to improve tourism and community links within the town and it is understood that they may wish to progress this further.
- 2.5 2 Fisher Street
- 2.6 The property has been vacant for a number of years, it links with the Town Hall on the first floor and has direct access to the LTC council chamber. LTC would like to bring the property back into use; the town council would occupy some of the property themselves as there is no space for additional staff within the Town Hall whilst other space would be used to offer a local 'patch office' or a base for community groups and advice surgeries.
- 2.7 Freehold valuations of the properties will be taken on behalf of the Council, and a process of further due diligence and negotiation with LTC will be completed before disposal is finalised. Any disposal agreement would seek to restrict possible future residential conversion and protect the community value of the assets through restrictive covenants and/or overage clauses.
- 2.8 Officers are separately undertaking feasibility work to bring 4 Fisher Street back into commercial use. If LTC also brought 2 Fisher Street back into use, this would be a huge benefit to this part of the town.

3 Community Asset Disposal Policy

- 3.1 Both freehold disposals outlined within this paper have two key drivers;
- The Council has limited funding available to ensure the future stability of the community assets whereas in both cases LTC are willing and capable of providing additional investment, including bringing a property back into use;
 - LTC will be in a better position to attract future external funding for the properties.
- 3.2 It is proposed that a paper come back to Cabinet in Autumn of 2019 which will outline a community asset disposal policy and Council's approach to future

decisions about community assets as it progresses the Asset Challenge process.

4. Corporate plan and council policies

4.1 The Corporate Asset Management Plan is clear about the need for the Council to carefully consider its property holdings through an Asset Challenge process and the difficult decisions that this may entail in order to achieve a sustainable asset base. Consideration of retention, investment, transfer and disposal are a key part of this process.

4.2 This proposal meets the following aims of the Corporate Plan: Thriving Communities - creating resilient, healthy and engaged stronger communities; Growth and Prosperity – creating a prosperous economy through improving the tourism offer and furthering the community value of assets ; and Value for Money – helping support a sustainable asset base.

5. Business case and alternative option(s) considered

5.1 The Corporate Asset Management Plan outlines that in some cases it is appropriate for the Council to dispose of the freehold of assets in order to meet the wider aims of the Corporate Plan and ensure future improved community value of assets. This proposal would bring the Council a capital receipt, remove future maintenance and rate liabilities, and secure the future of two important buildings within Lewes for the community – it is therefore considered the best option for the future of Market Tower and 2 Fisher Street.

6. Financial appraisal

6.1 The disposal of both of these properties has the potential to generate capital receipts to the Council, which can be retained or utilised to finance the Council's Capital Programme. As outlined in the report, both disposals will be subject to valuation and further due diligence. As noted in paragraph 3.1 of the report, the Council also has limited funding available to ensure the future stability of the assets whereas LTC could both provide additional investment and attract future external funding.

7. Legal implications

7.1 Best consideration and advertising disposal – section 123 Local Government Act 1972

S123 provides a power to dispose of land (except housing land and land held under the Planning acts) subject to restrictions. These are as follows:

- Consideration for the disposal must not be less than the best that can reasonably be obtained in the market, except with the express consent of the Secretary of State. A general consent has been issued by the Secretary of State (circular 06 of 2003), which permits disposals to be made at an under value where a council considers that will help to secure

the promotion or improvement of the economic, social or environmental well-being of its area and the aggregate undervalue does not exceed £2 million.

- There are further procedural requirements to be complied with on a disposal of open space land. A local authority is required to advertise its "intention" in a local newspaper for two consecutive weeks and to consider objections. The advertising process should be done before any final decision is taken on the disposal, so that proper consideration is given to the responses that are received.

7.2 State aid

In disposing of any land or interest in land the Council must ensure that it does so in accordance with State aid rules. There is an automatic assumption that no State aid is present in a sale for "market value" through (i) an open and unconditional bidding process or (ii) an expert valuation. If the automatic assumption does not apply it will be necessary to look at other aspects of the proposal, including whether the disposal falls outside of the State aid regime because it does not fulfil all of the State aid tests.

7.3 Contract Procedure Rules – disposal of land

Subject to certain exceptions, the Council's CPRs say that no freehold sale of land where the value exceeds £50,000 shall be made except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

7.4 Restrictive covenants and overage

Consideration should be given to the following:

- Imposing restrictive covenants in the freehold transfers limiting the future use of the properties.
- Including overage clauses in the freehold transfers enabling the Council to share in any future increase in value in the properties realised after the properties have been sold. This will enable the Council to share in any uplift in value if planning permission is granted to develop the properties for something much more valuable, e.g. residential use. A restrictive covenant does not provide adequate protection and also leaves open the amount payable by way of damages in the event of a breach. The precise terms of the overage, including the percentage share and duration of the overage rights, would have to be settled after taking professional advice.

8. Risk management implications

Any decisions to proceed with the disposal of Council assets is subject to the further due diligence as set out in the recommendations of this report.

9. Equality analysis

An equality analysis has been undertaken and has not identified any equality impacts .

10. Appendices

None.

11. Background papers

None