

## **Community Assets Scrutiny Inquiry Panel Meeting on 11 March 2024 Notes/transcript**

### **Geof Bacon**

- Due diligence around what is being proposed will come from the body who have made the application and will be supported by the service who will act as an advocate to establish whether the request that has been made is viable. We 'react' to requests for a community asset transfers. That is the decision we have taken as a Council, because if we do anything on a proactive basis, we set expectations at a level we basically cannot achieve and we end up with having to filter through those groups who are not prepared to take an asset on fully. We find it better to react to a group who has expressed an interest because the expectation and experience is there and often there is a desire to make something work.
- We will also look to that group to establish the need; see how they would meet and comply with Council service objectives. We will rely on those groups to come forward with consultation to establish if there are any other competing organisations or competing groups within the location to make sure all needs, as best as possible are met. I made a point very briefly in 2.9 in response to one of the questions about how the applicant and the Council ensure they have demonstrated an inclusive approach. It is actually almost impossible to completely engage with communities to the point where every single member of community is on board with a with a proposal. I think that is an impossible ask.
- Transparency and authority will be established through the cabinet reporting process. You will have integrated impact assessments within a report and the Advocate Service will be heavily involved in drafting that report.
- In terms of risks, you could have a dispute within a group or have a dispute between groups. You can have a failure of group and that could ultimately lead to a surrender of a leasehold interest or an actual forfeiture of leasehold interest if the terms have not been complied with. Or there could be a request for some form of mediation. That is quite an ask on the authority and there is a lot of work involved in that, and a very difficult process as you can imagine when it comes to mediating between groups with different aims and objectives. In terms of what is needed is more resource to support organisations who are coming forward with these proposals.
- The common theme when I speak to my colleagues in other authorities, from a property perspective, is the transactional side of things is really, really straightforward. Keep it simple and straightforward. It is a leasehold interest to enable the authority to gain control and oversight. There should not be any cribbling over what those lease terms should be, because it should be quite straightforward to be consistent and accurate, and reflecting what the policy says, but support and guidance needed.
- Up to that point they need to consider how as an organisation they can ensure they are properly constituted and they are sustainable, they are financially in a position where they can take something on. They need to understand all the rights and responsibilities that they would have and the risks they would have to take on board and to understand what that actually looks like.
- One of the more recent reports that went to Cabinet was appended today. It sets out proposed community asset transfers to demonstrate the process.

**Chris Holley (Councillor)**

If the lease is under seven years, do you have to have approval from Cabinet and/or from Welsh Government?

*Answer:* No, under the general disposal consent order, you can grant a lease at less than market value for less than seven years without there being a requirement for a cabinet decision.

**Stuart Rice (Councillor)**

- You have mentioned resourcing, it must be quite difficult to stress test and to look at some of the expressions of interest that you receive. Is there any sort of a process by which you go through to verify the information that is included in any application for an expression of interest? Or is there anything else that you feel that we could be doing going forward which would be able to enable the process?
- The other area as well, which I think is quite interesting, you said it is an almost impossible task was the consultation side of things in terms of bringing in the whole community, because I can see the guidance from the Welsh Government is to try and get the whole Community involved in and the whole community be able to access or to use the improved facilities. Is there potentially a rule of thumb or a style of consultation that we would currently see is acceptable or is it something that we need to develop further?
- How do we go about ascertaining the evaluation of the value of the transfer? So, I know for instance, that it says anything over £2,000,000 has to be referred to or dealt be with in a different way through the Welsh Government.

*Answer:*

The Advocate Service for that the group or organisation who have expressed an interest in Community asset transfer ensures that all this completed. I am satisfied to the best of the ability with the Advocate service in terms of justification and compliance, safety and consultation. I have no expertise in consultation it can be varied from public meetings to mail shots.

With regard to Welsh Government Guidance. It is guidance I would say that universally every authority would agree with it but would not be able to follow it fully. It is extensive, it is best practice which is quite often what Welsh government might do in terms of guidance.

In terms of my constitutional responsibilities, I have a team who are adequately resourced and experience enough to give me an indication of value of an asset. It would be based on open market value and if there is a potential uncertainty or grey area in establishing what that is (or we felt we need to be more robust) we would consult other professionals come up with an indication of value.

Quite often just because it is a large piece of land, it does not mean it is worth millions of pounds. You would establish that there is not the opportunity to create further value by way of that leasehold interest to a group. So, they can only actually use that particular site for what the lease is for.

**Stuart Rice (Councillor)**

You mentioned about the guidance and that is quite wide. Is there anything that you feel that could benefit in being defined more fully. Some statements in the guidance really sweeping, like whole Community, can be quite difficult thing to define. Is there

anything that would be useful for us to take on board in terms of our definition.

Answer Geoff Bacon: I would say I am probably more comfortable with the Swansea Council policy as being a way of taking it forward. It defines how we can take applications forward and ultimately be accepted. It covers all the bases the best we can do. A lot of it is a little bit subjective and needs a little bit of further work, but not every single example is going to be the same.

The key thing for me comes back to, how we could best take this forward ensuring that the support for the groups to establish exactly what they are trying to trying to achieve. That enables us to be very clear from the outset.

### **Jamie Rewbridge**

The expression of interest process (EOI) (in terms of the formal process) was adopted by cabinet a couple of years ago and this has really only been tested through the assets and the lands that have been requested through a community asset transfer mostly in cultural services realm. So, we are on the sharp end of that as a service to try and manage those.

Through that formal CAT process, we establish a robust account of the seriousness of some of these expressions of interest, because very quickly you could wean out those that simply are not interested, or if they are unwilling to do an element of upfront work in order to get to a place to take on an asset, as it is a huge undertaking. It is therefore important that that process is robust. So, it is so it starts with that expression of interest.

The EOI includes a series of questions and information which starts to wean out the variety of reasons why they would like to take on an asset, their experience etc. Further to that we would have dialogue with them that may be teams calls and or face to face meetings. It may be with individual groups or groups that wish to collaborate. So, all of that is formed from my perspective part of that further robust process of understanding.

Seriousness of them wishing to take something on is established. Further robustness including the business plan, how it is going to be sustainable and the case can start to be built for it. When we feel we have enough information from that group through the dialogue, through the expression of interest and their business plan we are in a position then to alert the cabinet members and director of whichever services that the piece of land or asset they are showing interest in and have that initial consultation. That is all then all building towards a cabinet report which is likened to the one that was in the appendix today.

### **Stuart Rice (Councillor)**

One of the things that struck me as good was that the expression of interest form is pretty robust. It has got quite a lot of detail in it and it seems to ask the right questions.

How is the information then verified and what is the process of going through that with the group to make sure that it stands up over time. And what do we do if there were two rivals perhaps or two different organisations that are interested in the same potential land for transfer?

Going back to the consultation side of things. Is there basic sort of minimums if, for example, there was another statutory body or say a community council or something like that in the area, does any does the panel or do Members have been involved in the Community asset transfer process? Do you check in with Community council first, or at least consult them, or an established local group before moving forward with an intended person?

**Councillor Francis Davies (Cabinet Member)**

Community Councils might get involved sometimes, we will ask if they have had experience or history of running the type of asset that they want transferred. They may not even employ any staff and say only have a clerk who is part time. So, that needs to be taken into consideration. We ask, have they got the expertise...can they run it? Can they run it better than the than the Council are presently running it for the community?

Skills I think are an important part of it, but there are lots of ways that the local authority or others can contribute with those skills to help. The groups may not have them within the group, but that can be supplied to them because I would hate to see communities excluded and in some of the more deprived areas, those professional skills are not so readily available, and therefore there is an inequality of how you provide and help certain communities.

**Sturt Rice**

I think when we look at the expressions of interest, a skills audit has got to be a key element of it. They have got to have certain skills, must remember this is a public asset so we make sure the criteria that assesses it builds in safeguards it for the future.

**Will Thomas (Councillor)**

We have one asset transfer potentially going through at the moment in our Community Council. We have had one successful one with the Community Council involved through working alongside a charity with the Underhill Park Asset Transfer. What I found frustrating not knowing where we are in the process. The legal department's incredibly busy and in fairness you do not feel you can chase them up every five minutes. So, I think some kind of log as to where we are with the process, where people can be informed and updated. That is something that I think needs to happen because obviously officers otherwise need to go around the houses to find out where are we with it.

Councillor Frances Davis mentions a good point with the deprived areas and it is something that I think obviously is outside of this committee's control, but I think where it comes to Welsh Government, they could look at funding clerks for community councils, for example. I think just so that more areas could afford to have a Community Council because obviously the underlying cost of Clerk can obviously make it prohibitive for some areas to even consider having a Community Council in the first place.

**Wendy Fitzgerald**

I was going to say that in Penllergaer we are rather a different community because

we do have a Community Council and what is now the village hall, which was formerly the old school, which closed in the 70s when we had a new school here that was taken over by the Community Council not long Community councils were formed. So that is now run by them. There is a day nursery there operating during the daytime all the week, community groups can use it in the evenings and at weekends. It's an old building so obviously that incurs expense because there's always something that needs repairing, but it has been managed now for 30 years. Interestingly, too, it has been the Community Council that has developed the sports field in Penllergaer. The pavilion was constructed by the Community Council. So, I think in Penllergaer we can illustrate that communities can operate successfully in managing their assets. It can be hard work, there can be challenges, but it can be done with considerable success.

### **Councillor Hopkins (Cabinet Member)**

I certainly would totally agree with the good work that goes on within Community Councils. It is definitely value added, but not every area has got them as councillor Thomas has said, but we still do asset transfers into those areas. There has been one in my own ward recently where the park has been transferred. They do actually get through the evaluation process and it does work. Unfortunately, it will take time because there is so many people involved in the process, particularly with the demands on legal team, because they police everything that needs to go through it. It needs to be ensured that we do due diligence, that we make sure because this is public land and we want to make sure that everything within it is right so we as a council and public are protected. So, it is a long and can be quite difficult, but getting to the end process to ensure that we have done all that diligence is the right thing to do. I get the frustration and I understand it, but that is the process and if we can speed it up that would be great. But with the resources we have got, we are doing the best we can at this particular time.

### **Stuart Rice (Councillor)**

So I mean just to pick up on the points, how could we get earlier clarity or transparency of the duty of care responsibilities that people are taking on because it supports them at the outset, possibly independent support and i advice and organisations to say...if you take this on, this is what you will have to do, we will give as much information as we can in terms of what responsibilities will reside with those organisations.

### **Wendy Fitzgerald**

If you take on an asset which is a building and especially if it's an older building, you have to be acutely aware that that's going to cost money. So, this is why it is a reasonable thing for a community council to do, because a Community Council can raise a precept and with an organisation, I am not sure it is quite so viable. I think there needs to be considerable prudence exercised.

### **Councillor Robert Francis Davies**

Over the years I have seen good examples that work very well. I have seen examples that have failed miserably. Patty Pavilion was cited as an example. Anybody going into an asset transfer should have their business case. They should make sure they have a good committee around them with the expertise that they get out and the responsibilities that they are responsible for. We have got to be ensure

we have a good governance of it and the people who are the trustees or the directors of a limited company take it on, must be well aware of what they are taking on because they do have a legal duty and legal responsibilities.

We need to impress on to people, where is your business case? Have you sought independent legal advice because the Council can give so much advice? A Community council can give so much advice, but those people taking it on need to get independent legal advice as well. I think that is a really important point, making sure that people understand duty of care and responsibility that have when they take on these assets or form a body or entity to be able to do it. That is a pretty key.

### **Geoff Bacon**

You have got to rely on what you think the liabilities might be if it was a particularly a poor asset or a particularly over ambitious business proposal business case. The latter will be down to the Advocate Service and the former will be down to my services to assess. They will have to recognise the fact you have these particular problems.

If it fails, even with the best will in the world, there is no penalty or there will not be penalised for taking that on. It would just revert back to the Council and that would be that would be the end of it. We have tried our best but I do not think we do anything too robust when it comes to analysis of those business cases. Because I think that might be if we were too robust and too challenging, I think probably 90% of them would not get anywhere, probably more than 90% to be honest with you.

### **Stuart Rice (Councillor)**

It is an interesting point though you raised to be checking in after the transfer has taken place. It is that continued relationship. It is something that will probably as a panel needs to think about what due diligence would be going forward, not just on the business case. But going forward I presume for instance that we would as landlord of that land or property that any actions or works done to land would or property would have to go through us first.

Answer: In theory, if there's substantial works at the outset, they would have to apply for landlord's consent to ensure those works are done. And I would say in compliance with relatively statutes and regulations, we would be relying on them to apply for planning and relying on the group to get building regulations. Beyond that, no we would not be doing regular checks for instance because we do not have the resource to that. We have got about two thousand plus leasehold interests in this Council.