

CHESHIRE EAST COUNCIL

Cabinet Member for Finance

Date of Meeting: 12th August 2014
Report of: Property Services Manager
Subject/Title: Congleton Community Garden, Congleton
Portfolio Holder: Councillor Peter Raynes

1.0 Report Summary

- 1.1 To consider a request from Congleton Town Council to transfer Congleton Community Garden, High Street / Lawton Street, Congleton, Cheshire, CW12 3AE (shown edged red on the attached plan) by way of 125 year lease as part of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process.

2.0 Recommendations

- 2.1 Subject to the response to the public space advertisements referred to in 8.3, to transfer by way of 125 year lease Congleton Community Garden, High Street / Lawton Street, Congleton, Cheshire, CW12 3AE (shown edged red on the attached plan and referred to in this Report as the Garden) to Congleton Town Council on the terms stated in 3.3 and other terms to be agreed by the Property Services Manager.

3.0 Reasons for Recommendations

- 3.1 On 5th September 2011 it was decided by the Cabinet that a number of properties (Appendix A properties) should be transferred to the Town or Parish Council for the area in which the properties are located as a first phase of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process and that certain other properties (Appendix B properties) be considered for transfer with the decisions as to whether to sell being delegated to the relevant portfolio holder(s).
- 3.2 It was reported to Cabinet that every transfer or lease would be on the following terms namely that:
- The transfer/ lease would protect community use of the asset.
 - The transfer/ lease would take place for a nominal value (£1) and the Town Council will be wholly responsible for the service and the asset save insofar as the Council has residual legal responsibilities under contracts or legislative provisions.
 - If allowing change of use, the agreement would secure an overage

payment for the Council if there is a future planning permission which enhances the value of the asset or the Town Council sells the asset within an 15 year period with increase in value/ proceeds of sale returning to Cheshire East on a reducing sliding scale

And Cabinet resolved that delegated authority be given to identified officers to finalise standard terms for all the transfers. Standard heads of terms were subsequently approved by the relevant officers and the Portfolio Holder for Places and Strategic Capacity.

- 3.3 The Garden was neither an Appendix A nor an Appendix B property but has since been identified as an appropriate asset to be devolved to the Town Council. The 125 year lease to Congleton Town Council will be based upon the standard heads of terms and, as it will prohibit a change of use of the Garden, no overage agreement will be required.

4.0 Wards Affected

- 4.1 Congleton West

5.0 Local Ward Members

- 5.1 Cllr Gordon Baxendale
Cllr Roland Domleo
Cllr David Topping

6.0 Policy Implications

- 6.1 The 125 year lease is in line with the Council's policy of transfer and devolution of assets to Town and Parish Councils for a nominal value.

7.0 Financial Implications

- 7.1 The impact of the transfer to Congleton Town Council would have minimal financial impact on Cheshire east Council budget in 14-15 as there are currently minimal operational costs.
- 7.2 Once the Gardens have transferred, then all Repair, Maintenance, Utility and Rates become the responsibility of the Town Council and that they would be directly liable.

8.0 Legal Implications

- 8.1 The Council has no power to dispose of property by a freehold transfer unless it secures the best consideration reasonably obtainable or it has Secretary of State consent. Under the Local Government Act 1972 General Disposal Consent (England) 2003 the Secretary of State gave general consent to disposals for less than best consideration if:

- (a) The disposing authority considers that the purpose for which the land is to be disposed of is likely to contribute to the achievement of

any one or more of the following objects of the whole or any part of its area, or all or any persons resident or present in its area:

- a. The promotion or improvement of economic well-being;
- b. The promotion or improvement of social well-being;
- c. The promotion or improvement of environmental well-being;

(b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2m; and

(c) All other conditions and requirements of the Consent are satisfied.

8.2 In transferring assets the Council must behave prudently to fulfil its fiduciary duty

8.3 As there is open space within the land outlined red on the attached plan, then it will be necessary to advertise the potential disposal of the Garden under the provision of the Local Government Act. The adverts have been placed in the press and the period for representations to be made will expire on 31st July after which, if objections to the disposal are made, the Portfolio Holder will decide whether the lease will be granted.

9.0 Risk Management

9.1 The 125 year lease will prohibit changes of use of the Garden.

10.0 Background Information

10.1 The purpose of this request from Congleton Town Council is to facilitate a grant application to the Heritage Lottery Fund (HLF) to refurbish the Cenotaph and Community Garden in Congleton.

11 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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