

## CHESHIRE EAST COUNCIL

### REPORT TO REGENERATION AND ASSETS AND COMMUNITIES – COUNCILLOR DON STOCKTON & COUNCILLOR LES GILBERT

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**Report of:** Executive Director Economic Growth and Prosperity  
**Subject/Title:** Land Lane Allotments and Cliff Road Allotments, Wilmslow  
**Date of Meeting:** 15 December 2015  
**Portfolio Holder:** Regeneration and Assets and Communities

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#### 1.0 Report Summary

- 1.1 An approval is required to transfer two allotment sites known as Land Lane Allotment and Cliff Road Allotment, Wilmslow (as shown edged red on the attached plans) as part of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process which falls in line with the previous cabinet decision for the transfer of assets and devolution of services.

This approval is required to enable any existing or required rights to be legally retained for any of the Councils adjacent land being retained and dealt with in the legal documentation as opposed to allowing the vesting and registration to just occur.

#### 2.0 Decision Requested

- 2.1 Subject to the response to the public space advertisements referred to in 8.4, to dispose by way of a freehold transfer Land Lane Allotment and Cliff Road Allotment, Wilmslow (as shown edged red on the attached plans) to Wilmslow Town Council for a nominal value on the terms stated in 3.4 and other terms to be agreed by the Assets Manager in consultation with the Portfolio Holder and Head of Legal Services pursuant to the provisions of s.99 of the Local Government and Public Involvement in Health Act 2007.

#### 3.0 Reasons for Recommendations

- 3.1 On 5<sup>th</sup> September 2011 it was decided by Cabinet that a number of properties (Appendix A list of 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 nominated properties (Appendix B list of properties) be considered for transfer with the decisions as to whether to sell being delegated to the relevant portfolio holder(s) as a further review of them was required.
- 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 pursuant to the provisions of s.99 Local Government and Public Involvement in Health Act 2007.

3.3 The transfer to Wilmslow Town Council will be based upon these standard heads of terms.

3.4 This land/allotments were not listed in the Appendix A or Appendix B property lists given approvals to transfer on certain terms and conditions in the 5<sup>th</sup> September 2011 Cabinet decision. Wilmslow Town Council was only created in May 2011 as a result of a formal Community Governance Review Process and was not in a position to make a decision about what assets it would consider for transfer

3.5 The Cheshire East Council Reorganisation of Community Governance (Wilmslow, Styal and Handforth) Order 2011 came into effect in April 2011 and confirmed that Wilmslow Town Council was to be formed.

3.6 As Wilmslow Town Council has been created by an Order, then the Allotments are already vested in the Town or Parish Council by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008. The regulations apply to every reorganisation order including the 2013 Order unless varied by agreement pursuant to s.99 Local Government and Public Involvement in Health Act 2007. By Regulation 9 of the 2008 Regulations it is provided that where immediately before the Order date, land in an area constituted as a parish by a reorganisation order is held by a principal council for any purpose of the Allotments Acts 1908 to 1950 or is vested in a principal council and used for those purposes, it shall on the order date transfer to and vest in the parish council for that parish or, if there is no such council, the parish meeting for that parish.

3.7 The Council is therefore proposing to deal with these transfers to Wilmslow Town Council by way of a freehold transfer to enable any existing or required rights to be legally retained for any of the Councils adjacent land being retained and dealt with in the legal documentation as opposed to allowing the vesting and registration to just occur.

#### **4.0 Wards Affected**

4.1 Wilmslow Lacey Green

Wilmslow East

#### **5.0 Local Ward Members**

5.1 Cllr Don Stockton

Cllr Rod Menlove

#### **6.0 Policy Implications including - Climate change - Health**

6.1 The transfer is in line with the council policy of transfer and devolution of asset to Town and Parish councils for a nominal value.

#### **7.0 Financial Implications**

7.1 The impact of the transfer to Wilmslow Town Council would have minimal financial impact on CEC budget in 15-16 as there are currently minimal operational costs.

7.2 Once the Allotments 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 (Authorised by the Borough Solicitor)**

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

All other conditions and requirements of the Consent are satisfied.

- 8.2 It has been confirmed that the value of Land Lane Allotments and Cliff Road Allotments does not exceed £2million.
- 8.3 Notwithstanding the above powers the Council has a fiduciary duty to the taxpayers and must fulfil this duty in a way which is accountable to local people
- 8.4 In transferring assets the Council must behave prudently to fulfil its fiduciary duty
- 8.5 All disposals must comply with the European Commission's State aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and the amount of the subsidy complies with State aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £155,000 (200,000 Euros) in state aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition). State Aid does not apply in this instance because this is a transaction between statutory bodies where there is no distortion of the market or competition
- 8.6 In accordance with Section 123 (2A) of the Local Government Act 1972 the Council is legally obliged to publish notice of its intention to dispose of open space for two consecutive weeks in a newspaper circulating in the area in which the open space is situated. In this context the Council will have to advertise the proposed disposal of the allotments. As well as a requirement to advertise Section 123 (2A) provides that a principal council may not dispose of open space unless, before disposing of the open space consideration is given to the objections/representations made.

## **9.0 Risk Management**

- 9.1 Wilmslow Town Council has requested the allotments are transferred by way of a freehold. It has previously been agreed that allotments throughout Cheshire East will be transferred by way of 125 year leases. However, Counsel has previously advised that the freehold of the allotment sites would vest automatically, as a matter of law, in the new parish / town council once created. There is a risk of challenge of being inconsistent with regard to previous allotment transfers throughout the Borough.
- 9.2 Cheshire East Council is not proposing to carry out any further improvements to the allotments that we consider not to be a priority due to budgetary implications. There is a risk that Wilmslow Town Council will be unwilling to enter into the proposed freehold transfer unless CEC deal with these issues first.

## **10.0 Background Information**

- 10.1 On 5<sup>th</sup> September 2011 it was decided by the Cabinet that a number of 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.
- 10.2 This land was not on either of the Appendix A or Appendix B property lists approved to transfer in the 5<sup>th</sup> September 2011 cabinet decision.
- 10.3 Wilmslow Town Council was created in May 2011 as a result of a formal Community Governance Review Process. As Wilmslow Town Council has been created by an Order, then the Allotments are already vested in the Town or Parish Council by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008. The regulations apply to every reorganisation order including the 2013 Order. By Regulation 9 of the 2008 Regulations it is provided that where immediately before the Order date land in an area constituted as a parish by a reorganisation order is held by a principal council for any purpose of the Allotments Acts 1908 to 1950 or is vested in a principal council and used for those purposes, it shall on the order date transfer to and vest in the parish council for that parish or, if there is no such council, the parish meeting for that parish.
- 10.4 The Council is therefore proposing to deal with these by way of a freehold transfer to enable any existing or required rights to be retained given the Councils adjacent land being retained.

## **11.0 Access to Information**

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

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