

## CHESHIRE EAST COUNCIL

### REPORT TO PORTFOLIO HOLDER - REGENERATION

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**Date of Meeting:** 23 January 2016

**Report of:** Executive Director of Place

**Subject/Title:** Lease of Land adjacent to Anson Engine Museum to Poynton Town Council

**Portfolio Holder:** Regeneration

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#### 1.0 Report Summary

- 1.1 This report relates to a request from Poynton Town Council to transfer Land adjacent to Anson Engine Museum, Anson Road, Poynton, Cheshire East SK12 1TD (shown edged red on the attached plan) by way of a 30 year lease for a peppercorn rent as part of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process.
- 1.2 The 30 year lease will be in line with the decision made by cabinet dated 12<sup>th</sup> July 2016 and on standard terms that were decided by Cabinet on the 5<sup>th</sup> September 2011 where the use will be protected and the Town Council will be responsible for the service and asset in the future.

#### 2.0 Recommendations

- 2.1 It is recommended that the;
  - 1) Portfolio Holder for Regeneration approves the transfer of Land adjacent to Anson Engine Museum, Anson Road, Poynton, Cheshire East SK12 1TD (shown edged red on the attached plan) by way of a lease of up to 30 years for a peppercorn to Poynton Town Council on terms and conditions to be determined by the Asset Manager in consultation with the Director of Legal Services.
  - 2) The Land adjacent to Anson Engine Museum, Anson Road, Poynton, Cheshire East SK12 1TD (shown edged red on the plan attached to the Report) ('the Land') be advertised as a disposal of public open space.
  - 3) That the Portfolio Holder for Regeneration be given delegated authority to determine whether to transfer the Land by way of a lease of up to 30 years to Poynton Town Council following the statutory process and due consideration of the responses to the open space advertisements.
  - 4) The Portfolio Holder for Regeneration notes that any leasehold transfer of the Land shall be on the terms stated in the Report, or such other terms as the Portfolio Holder for Regeneration shall determine in consultation with the Assets Manager and the Director of Legal Services.

- 5) The Portfolio Holder for Regeneration authorises the Director of Legal Services to approve all legal documentation and proceed to practical completion of the lease and any other legal documentation.

### **3.0 Reasons for Recommendations**

- 3.1 The subject land will be used for storage purposes to store Poynton Town Council's property and sundry items. This use will enhance the use of the current site as it is not currently occupied and is in need of urgent maintenance.
- 3.2 On 12<sup>th</sup> July 2016, consistent with the 2011 cabinet paper, it was decided by the Cabinet that a number of properties should be considered for leasehold transfer to the Town or Parish Council for the area in which the properties are located as a first phase of the Local Service. This property has been identified as a suitable asset to be transferred to the Town Council as it will assist in the delivery of services to residents.
- 3.3 It was reported to Cabinet in July 2016 which was consistent with Cabinet paper dated in 2011 that every transfer or lease would be on the following terms namely that:
- The term of lease will be 30 years.
  - The lease would protect community use of the asset.
  - The 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, and
  - Cabinet resolved that delegated authority be given to the Portfolio Holder for Regeneration to approve the terms, in consultation with the Portfolio Holder for the relevant service managing or responsible for the asset in question and the Executive Director – Place and authorise the legal completion of those asset transfers in accordance with the Council's Constitution
- 3.4 Cheshire East Council is not statutorily required to transfer this piece of land to the Town Council. As a result the transfer also falls in line with the Cabinet paper dated 12<sup>th</sup> July 2016 which sets out the framework for disposal of assets by the Council.
- 3.5 The service department have confirmed that they are content to accommodate the request of the Town Council to lease the land for the required purpose.

#### **4.0 Wards Affected**

4.1 Poynton East and Pott Shrigley Ward

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

5.1 Cllr Jos Saunders

5.2 Cllr Howard Murray

#### **6.0 Policy Implications including - Carbon reduction - Health**

6.1 The 30 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 existing site has an existing use value which is between £1,250 to £2,500 (as a premium) and therefore the Council proposes to forego the capital receipt in this instance to support this request.

7.2 A lease to Poynton Town Council would have a financial impact on the Council's budget in 2016/17 as there are currently operational costs with regard to maintenance. Once the land is leased, then all repair and maintenance becomes the responsibility of Poynton Town Council and they would be directly liable. Therefore the operational cost for this site will be reduced.

#### **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.

8.2 The Council has the power to dispose of the land pursuant to s123 of The Local Government Act 1972 subject to it being at the best consideration that can reasonably be obtained. As the land is deemed to be public open space, then it will be necessary to advertise the proposed disposal of the land under the provisions of the Local Government Act 1972. Any objections and/or representations received as a result of the advertising process will be considered by the Portfolio Holder prior to any final decision being made in respect of the proposed disposal of the land.

8.3 The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is

£2million or less, as in this case, and subject to those powers being exercised in line with public law principles.

- 8.4 The Council has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 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).
- 8.6 Given the site is to be transferred to a Statutory not for profit local authority Public Body, then state aid rules are exempt.
- 8.7 As the land is open space then it will be necessary to advertise the potential disposal of the land adjacent to Anson Engine Museum, Anson Road, Poynton, Cheshire East SK12 1TD under the provision of the Local Government Act. If objections to the disposal are made, the objections have to be considered and on the merits of the objections a decision will have to be made as to whether to proceed with the lease disposal. The Portfolio Holder will be asked to decide whether the lease will be granted following a separate report being made to him if necessary at the appropriate time. The decision by the Portfolio Holder will be subject to a judicial review challenge so the consideration will have to be fair and robust.

## **9.0 Risk Management**

- 9.1 The 30 year lease will prohibit a change of use and therefore there are no risks perceived.

## **10.0 Background Information**

- 10.1 Poynton Town Council have approached the Council to transfer the Land adjacent to Anson Engine Museum, Anson Road, Poynton, Cheshire East SK12 1TD and this is agreed by way of a 30 year lease.
- 10.2 The Council has received a request to enable Poynton Town Council to use the site for storage purposes to store the Town Councils property and sundry items which is for the benefit of the Poynton and its residents.
- 10.3 The land is owned freehold by Cheshire East Borough Council and falls within the vacant land known as Land and Civic Amenity Site, Anson Road, Poynton.

- 10.4 The extent of the land to be leased by Poynton Town Council is shown outlined in red on the attached plan for identification purposes. The Asset Management Service has confirmed that the land is surplus to operational requirements. It has been advised that the proposed lease will be beneficial to Poynton Town Council as it will provide enhanced storage facilities for Poynton and the local community. Therefore, the Asset Management Service supports the lease proposal.
- 10.5 Poynton Town Council have confirmed that it has no intention of this land being used for any other purpose than for the proposed use and the intention is that it will be protected for this use within the lease.

#### **11.0 Access to Information**

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

Name: Lee Beckett  
Designation: Valuer  
Tel No: 01270 686122  
Email: [lee.beckett@cheshireeast.gov.uk](mailto:lee.beckett@cheshireeast.gov.uk)