

Economy and Growth Committee

Date of Meeting:	15 th July 2021
Report Title:	Asset Transfer Framework
Report of:	Director of Growth & Enterprise – Peter Skates
Report Reference No:	EG/02/21-22
Ward(s) Affected:	All Wards

1. Executive Summary

- 1.1.** The Council wishes to build on the successes of its previous assets transfer policy and be able to effectively transfer assets to the next tier of Local Government and other community organisations.
- 1.2.** In addition, the Council is currently undertaking a strategic review of assets which may create an increase in the number of assets that are surplus to the council's operational requirements and therefore introduces an increased potential for the community transfer of assets.
- 1.3.** The Council therefore wishes to encourage open dialogue about potential asset transfers with town councils, parish councils and community groups to help inform the strategic direction relating to the Council's assets.
- 1.4.** This report proposes revisions to the Council's existing community asset transfer framework to bring it line with the Council's Corporate Plan and to facilitate improved and more open dialogue with partners.
- 1.5.** The proposed revised framework would specifically support the delivery of the Corporate plan as follows:
 - **Open** – the revised policy provides a clearer and more transparent process for community organisations in how to engage in the process of community asset transfers.

- **Fair**– the proposed changes will provide a consistent and supportive approach to community organisations engaging in a community transfer process. Furthermore, transfer of assets to community organisations can enable the delivery of benefits to local communities
 - **Green** – The transfer of assets could facilitate investment to improve their energy efficiency and reduce their carbon footprint. Assets could also be transferred to support the delivery community led environmental projects.
- 1.6. The driver for the framework is about enabling use of assets for the benefit of local communities and protecting their long-term use for the benefit of residents.
 - 1.7. This has the potential to strengthen community links and provide greater access to the community, increasing the flexibility of the offer of a particular asset whilst reducing costs to the council.
 - 1.8. The council has an existing asset transfer framework in place and has been able to transfer a number of assets successfully to community organisations and local councils under this framework.
 - 1.9. However, this policy has been reviewed and updated to give a greater degree of flexibility regarding the terms of transfer and also does not explicitly exclude any category of asset from potential transfer.
 - 1.10. The Committee is now being asked to approve the latest version of the framework for the basis of Borough wide consultation.

2. Recommendations

- 2.1. That the Committee endorses and approves the revised Policy, which is outlined in Appendix A to this report for the basis of consultation.
- 2.2. That the Committee delegates authority to the Executive Director – Place in consultation with the Chair of the Committee to consider the results of the consultation and approve the final version of the policy.

3. Reasons for Recommendations

- 3.1. The revised policy enables the Council to ensure the long-term use of transferred assets is protected for the benefit of residents in the Borough.
- 3.2. The Council and its predecessors have transferred assets prior to 2011 to community groups, since this time the Council has transferred 65 assets to the next tier of local government. Since 2019 it has transferred seven assets with a further seven assets progressing to completion. However, the Council wants to increase the opportunities for the transfer of assets.

- 3.3. The community transfer of assets to eligible organisations can also support the reduction of council running costs whilst offering the benefit of allowing local communities to provide improved and sustainable services.
- 3.4. The proposed policy will enable early discussions with interested parties, which will help them understand the framework and process. It is recognised that transfer of community related assets can be complicated, and this will enable prospective recipients to understand these issues as early as possible. Further to this the Council has not sought to limit the assets to be discussed.
- 3.5. The proposed Policy is underpinned by Government Legislation in relation to best consideration, public open space, Allotments, Town and Parish Councils, restrictive covenants, state aid and Landlord and Tenant legislation. This list is not exhaustive. The policy is intended to protect Cheshire East Council in exercising its powers with regard to land and property transactions and similarly it also looks to protect the recipient of any asset. The policy is designed to enable consistent decision taking by the Council, which will generate certainty for applicants.

4. Other Options Considered

- 4.1. To continue transferring assets under the 2016 Asset Transfer Framework however the proposed new Asset Transfer Policy is considerably more flexible which will enable the Council to deal with each request on a case by case basis.
- 4.2. Not adopting this approach will reduce the Council's ability to progress efficiently through the required property transactions, increasing the burden on resources without necessarily changing the outcome for residents.

5. Background

- 5.1. The revised Policy will provide a greater flexibility on terms than has previously been possible.
- 5.2. The Policy differs from previous policies in that it does not explicitly exclude any category of asset from potential transfer and this leaves open the possibility of transfer on a case by case basis. Therefore, the range of assets available is not just limited to assets held 'surplus to requirements.
- 5.3. The premise of any transfer of an asset is that the transaction is of mutual benefit to Cheshire East Council, the receiving organisation and the local community.

- 5.4. The policy is also drafted on the basis that the transaction of transfers must proceed on a cost neutral basis with no transfer costs to be incurred by the Council (such as legal and surveyors' fees). However, the council will, at its discretion, consider waiving these fees on an exceptional basis if that is deemed to be appropriate to support a particular community objective.
- 5.5. The policy is based on a presumption in favour of a management agreement as this allows the Council a greater degree of control to protect the longer-term interests of the asset for the benefit of residents in the Borough
- 5.6. However, the Council does recognise that in some exceptional circumstances that the transfer of freehold may be desirable, for example where a considerable investment is proposed by the recipient of the asset. This will therefore be considered
- 5.7. This Policy is designed to enable consistent decision taking by the Council, which will generate certainty for applicants and will follow the due process as set out in the Policy (appendix A).

6. Consultation and Engagement

- 6.1. Town and Parish Councils have been engaged in the development of this draft policy.
- 6.2. The revised draft will be subject to a Borough Wide consultation exercise so that all community organisations can provide their views on the proposed policy.

7. Implications

7.1. Legal

- 7.1.1. The Council has the power to dispose of land pursuant to s123 of the Local Government Act 1972 subject to it being at the best consideration that can reasonably be obtained. Section 123 of the Local Government Act requires the advertisement of the proposal to dispose of open space before its disposal and proper consideration of any objections received following such advertisement.
- 7.1.2. The Council would use its powers pursuant to Section 123 of the Local Government Act 1972 to dispose of the land . The Council would have to demonstrate best consideration for any disposals or meet the requirements of the General Disposals Consent and (where necessary) seek the permission of the Secretary of State to dispose at an undervalue.
- 7.1.3. Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land. The main caveat to this power is that the Council must not do so for "a consideration less than the best that can

be reasonably obtained". This is interpreted as being the best price achievable in the open market.

- 7.1.4. It is possible for Local Authorities to dispose of land at less than best consideration where the unrestricted value of the land is less than £2million, and to do this the Council must demonstrate that value is being received in other ways that justify the monies foregone to the public purse.
- 7.1.5. All disposals must comply with the new Subsidy Control rules Further legal advice on compliance with these rules will be taken if it is proposed to dispose of any land at an undervalue
- 7.1.6. Following the recent adoption of the social value policy, the Council should also consider whether or not the transfer of the asset will be of best value to the Council, and to the community to which the asset serves. The social value of any transfer includes the consideration of any social benefits that the users of the asset will gain ie social investment and the wider financial and non-financial impacts including the wellbeing of individuals and communities, social capital and the environment. As the transfer of an asset can be of value to both the community and for the Council.

7.2. Finance

- 7.2.1. All expressions of interest received will be dealt with by using existing staffing resource within the Council.
- 7.2.2. The new Policy contains a condition that all transfers must proceed on a cost neutral basis with no costs to be incurred by the Council such as legal and surveyors' fees. Any property transferred will do so in its present condition.
- 7.2.3. Financial Implications of specific asset transfers need to be considered on a case-by-case basis and will be subject to separate decisions when the need arises.
- 7.2.4. There is an expectation within the current MTFS proposals that asset transfers will deliver a financial benefit for the Council.

7.3. Policy

- 7.3.1. The new Policy is contained within Appendix A. The Council has the ability to dispose of property as set out in the legal implications section. This approach allows a consistent approach to dealing with property transactions in general and specifically asset transfers, enabling the Council to achieve its existing aims, objectives and policies in the most efficient way possible.

7.4 Equality

- 7.4.1 An Equality impact assessment has been undertaken and it is considered that the transfer of assets to the community will enable greater access and

local say in how assets are used. It will generate increased flexibility and local 'ownership' of the asset, increasing the opportunity for a greater cohort of residents to access these assets

7.5 Human Resources

7.5.1 The general principle of transfer will be that TUPE applies and that staff will transfer to the relevant Town or Parish Council or Eligible Organisations where this is applicable.

7.5.2 Formal processes will need to be put in place to ensure a fair and smooth transfer. There are likely to be some individual instances where the transfer is subject to negotiation e.g. where a member of staff spans several relevant transferring assets but not a significant proportion at one particular asset.

7.5.3 It must be noted that there may be residual costs arising where TUPE does not apply but a post is no longer required as a result of transfer. HR advice, good practice and negotiation will be used to resolve such issues.

7.6 Risk Management

7.6.1 There are a range of risks for the Council and eligible organisations of an asset through a community asset transfer process. Clearly with any property transaction there are risks, which the Council from its perspective will actively look to manage through design of any agreements to protect the use and asset.

7.6.2 It is important that an eligible organisation of an asset fully understands the risks associated with a transfer of an asset. Eligible organisations will, at the right step in the process, need to be able to provide a business case and this must consider these risks. This will help the Council build the case for the asset to be transferred. The potential risks for the both the Council and an eligible organisation are outlined within the Policy.

7.7 Rural Communities

7.7.1 The new Policy is required in order to promote an enhanced public benefit which can be achieved by facilitating inward investment and grant funding, empowering rural communities, building the capacity of the community and developing sustainable organisations, providing improvements to local services and providing value for money in line with Councils corporative objectives.

7.8 Children and Young People/Cared for Children

7.8.1 Cheshire East Borough Council is committed to supporting Town and Parish Councils, Voluntary Organisations, Community Groups and Social Enterprises to improve the use of Council assets in order to benefit local residents in the communities that they reside. This approach to asset

transfers is also aligned to the Council's Corporate plan. The Corporate plan is based around a key vision of being open, fair and green.

7.9 Public Health

7.9.1 The Council is committed to supporting the most vulnerable residents, whilst enabling others to support themselves and lead a prosperous and healthy life. This is a core objective of the Council and the new Policy is aligned to this.

7.10 Climate Change

7.10.1 This proposal, as with any proposal to dispose of the Council's assets has the potential to reduce the Carbon Footprint of the Authority. It will enable recipient organisations to invest in the asset and this in turn may see not only greater use but other benefits such as improved efficiency of the asset.

Access to Information	
Contact Officer:	Peter Skates Director of Growth & Enterprise peter.skates@cheshireeast.gov.uk
Appendices:	Asset Transfer Policy
Background Papers:	None