

# **Cheshire East Council**

## **Draft Asset Transfer Policy**

Working for a **brighter future** together



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## **Contents**

- 1.0 Introduction and overview**
- 2.0 Aims of community asset transfer**
- 3.0 Benefits and risks of asset transfer**
- 4.0 Eligible Organisations**
- 5.0 Assets available for transfer**
- 6.0 Asset transfer process**
- 7.0 Assessment of asset transfer application**
- 8.0 Risk management and lease clauses**

## **Appendices**

- A – Flowchart**
- B - Informal expression of interest**
- C– Initial asset considerations**
- D - Full asset transfer application**

## **1.0 Introduction and Overview**

- 1.1 This policy supports the transfer of assets owned by the Council to Town and Parish Councils and voluntary organisations where this can improve the use of council assets to the benefit of residents in the local community.
- 1.2 The Council's Corporate Plan sets out the vision, priorities, and values that the Council will be following for the next five years, reinforcing the council's commitment to making Cheshire East a place where everyone can thrive.
- 1.3 One of the key aims of the plan is to support people and communities to be strong and resilient, strengthening our relationships with our partners and voluntary organisations and looking for opportunities to work together even better to deliver our joint priorities. This policy approach to asset transfer is therefore closely aligned to the Council's Corporate plan in:
  - 1.3.1 Working in partnership to support communities to address local priorities
  - 1.3.2 Involving residents and communities in the design and delivery of services
  - 1.3.3 Supporting voluntary and community sector organisations as key Partners in the delivery of services
  - 1.3.4 Making best use of our buildings and assets to support the borough and our partners
  - 1.3.5 Allowing local people to have control over how the buildings and spaces that have significance to them are used
  - 1.3.6 Providing opportunities to make reductions in the running costs of the council estate whilst also delivering local priorities
- 1.4 The Localism Act (2011) provides the legislation to allow the transfer of assets. The act sets out a series of measures with the potential to offer rights and powers for Local Councils, charitable trusts, voluntary bodies and others to be able to make decisions for themselves and take responsibility to benefit their local communities.
- 1.5 The Council first adopted a Community Asset Transfer Policy in 2011 in response to the introduction of the act to provide a clear framework to support effective transfer of assets owned by the council. This policy has been reviewed and updated and is set out below.

## **2.0 Aims of community asset transfer**

- 2.1 The Council owns a diverse mix of assets, which are held for a wide range of reasons, however the Council recognises the opportunity that could be generated if some of these assets were in community management and / or ownership generating a range of benefits that have been set out previously.
- 2.2 This Policy is underpinned by Government Legislation in relation to best consideration, public open space, creation of new Town/Parish Councils, Allotments, 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.
- 2.3 The purpose of Community Asset Transfer invariably is about using assets for the benefit of the community. Therefore, this policy is also designed to protect the long-term use of transferred assets. As a result, the Council will design in protections in the legal documentation that reflect the proposals of the parties.
- 2.4 The Council also has a range of competing objectives when considering an asset for disposal, for example;
- Legislation: For example, Section 123 of the Local Government act 1972
  - Funding the Council's Capital programmes, by way of a Capital receipt
  - Generate an income by way of rental
  - Reducing the costs of the Council
  - Contribute to the Council regeneration priorities
  - Achieve corporate objectives by asset transfer to Town Councils, Parish Councils, and community organisations

The Council has to balance these potentially competing aims to maximise their contribution to achieve the objectives of the Council. A key aim of the Council will be to achieve a financial benefit on transfer.

- 2.5 Community assets are rarely used by all residents and the transfer of assets generates the opportunity for a wider range of residents to use the assets and therefore the Council will actively seek transfer to Eligible Organisations in order to promote the widest public value that can be achieved for example, facilitating inward investment and grant funding, empowering the community, building the capacity of the community and developing sustainable organisations, providing improvements to local services and providing value for money.
- 2.6 This policy is designed to enable consistent decision taking by the Council, which will generate certainty for applicants.

## **3.0 Benefits and Risks of Asset Transfer**

- 3.1 There are a range of benefits and risks for the Council and Eligible Organisations relating to an asset being taken through a community asset transfer process. It is clear that the benefits of transfer are not only financial but can also be about the delivery of improved outcomes, which are aligned to the Council's and the Eligible Organisations corporate objectives. Clearly with any property transaction there are also risks, which

the Council will actively look to manage though design of any agreements to protect the use and asset.

- 3.2 It is important that an Eligible Organisations of an asset fully understands the opportunities and 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 plan and this must consider these risks and benefits. This will help the Council build the case for the asset to be transferred. For example,

The **potential benefits** of an asset transfer could include:

**For the Council**

- Reduce costs and management burden, or provide a rental income
- Strengthen community links and deliver social, economic and environmental benefits
- Provide greater access to the community, increasing the flexibility of the offer of a particular asset

**For Eligible Organisations**

- Improve ties with the local community, increasing community participation
- Generate certainty and medium to long term stability
- Improve ability to fund raise, particularly for grant funding
- Supports the development of community led projects

The **potential risks** of an asset transfer could include;

**For the Council**

- Potential of not being able to demonstrate value for money, and/or contravening state aid or procurement rules or other legal or regulatory constraints
- Disadvantage to the community or individuals or generate a perception of unfair advantage for one group over another
- Potential for ongoing Council cost or liabilities

**For Eligible Organisations**

- Increased risk and management responsibility for an asset
- Potential for the asset to become a financial liability for the recipient
- Perception of unfair advantage for one group over another
- Capacity and ability to deliver proposed services or outcomes and manage the asset
- Perception of a loss of the asset by certain sectors of the community

These risks are, in large part, managed by the processes implemented in this policy.

## **4.0 Eligible Organisations**

- 4.1 This policy is not intended for commercial private organisations that generate a commercial return from an enterprise, distributing its profits. Other organisations, for example political parties are also not eligible. The Council will consider asset transfer to any Eligible Organisation whose delivery is aligned to the Council's objectives and its values.
- 4.2 Eligible Organisations must be able to demonstrate good governance, have an appropriate legal structure and have the capacity and competence to take responsibility for an asset, for example;
- Town and Parish Councils
  - Registered charities
  - Community Interest Companies / organisations
  - Social Enterprises
  - A constituted body
- 4.3 It is clear that, when considering organisations, their maturity and ability to manage an asset can vary. The Council will need to consider this factor when considering an asset transfer. A key document to support the Council in this decision making will be the proposals and business plan of the organisation.

## **5.0 Assets available for transfer**

- 5.1 The Council is open to discussions about the transfer of its property assets to the next tier of local government or the community as defined under Eligible Organisations above. The Policy 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.
- 5.2 However some assets for practical reasons are not suitable for transfer for example, where there would be a direct commercial impact to the Council or if it would hinder the delivery of the Council's services, remove the opportunity of strategic delivery of regeneration or due to the tenure of the asset may not be suitable to implement a transfer.
- 5.3 The Council also has a policy that relates to transfer of services to the community. The Council also has a policy, where the community can obtain rights to assets of community value and give an opportunity to bid for the property if it is sold. These policies are outside the scope of this policy and are called the Community Right to Challenge and the Community Right to Bid respectively. More information on these policies can be found on the Council's web pages.
- 5.4 Assets which are available for transfer will be transferred in their current condition, at nil cost to the Council and at the discretion of the Council.
- 5.5 The Council has publicly accessible information about all the assets it owns and is a good starting point to aid interested parties. For potential Eligible Organisations of

assets, the Council can provide more detailed information regarding the asset on a without reliance basis.

- 5.6 The Council's asset transfer process is not designed to provide grant funding to an Eligible Organisation. Should, as part of a business case, an applicant wants to understand the opportunity for funding, the team dealing with the asset transfer will direct applicants to the appropriate part of the Council or to another funding body. The outcome of these discussions can then feed into the applicant's planning and business case.

## **6.0 Asset transfer process**

- 6.1 To initiate a process, the Council will conduct a series of meetings with interested parties. These will allow those bodies to understand the process and discuss and test opportunities. Following this, the process that the Council will follow when considering asset transfers is set out in Appendix A.
- 6.2 The Council will prioritise applications in order of the scale of opportunity that this delivers to the Council in terms of financial savings. A timeline will be provided to applicants in the process.
- 6.3 Community asset transfers are considered to be the freehold or leasehold transfer of assets from the Council to third parties, invariably at less than best consideration in order that a good for the community can be delivered from the asset on an enduring basis. In transferring its assets to an Eligible Organisation, the Council will consider the transfer of management, offering a short, medium or long term lease, or in exceptional circumstances the freehold. This will be considered on a case by case basis, informed by an assessment of the business case put forward by the recipient.
- 6.4 The Council is bound by s123 of the Local Government Act 1972, State Aid rules and a general fiduciary duty to residents. These factors have to be considered when considering any transfer to another party, including other local government organisations. Risk relating to these issues is managed by encumbering any lease.
- 6.5 There is a presumption in favour of management agreement or lease as this will give the option to the Council of continuing to provide services from the asset, if the proposal fails and also allows the Council a greater degree of control over the asset ensuring that the intent of the parties at the inception is carried out over the long term. 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 at the Council's discretion.
- 6.6 Eligible Organisations will be offered the opportunity to submit an informal expression of interest in Council Assets for Transfer. A copy of the form can be found at Appendix B. An outline understanding of the use will be required, but a detailed business case will not be required at this stage. This allows Eligible Organisations to raise potential asset transfers with officers of the Council and work through the implications of these together prior to expressing a formal expression of interest. This also reduces the level of resource that interested parties need to undertake prior to understanding if an asset transfer is feasible or not.
- 6.7 The Council can treat with Town and Parish Councils, using the concept of One Public Estate. The concept of One Public Estate enables government bodies to trade assets amongst themselves at market value. Community organisations with an established property link to an asset could also be an eligible interested party. Parties without a

property interest in an asset are not be able to directly benefit from this policy, however if there is sufficient interest for the use of an asset for community activities, the Council may consider marketing the asset for this purpose, with groups being able to compete for the asset through a tender process.

- 6.8 The Council also has to consider the risk of a community asset transfer not progressing and therefore accruing additional holding costs and risks to the Council. Therefore, the Council may deliver community asset transfer on a twin track approach where applications from the community can be received whilst also marketing for an open market disposal.
- 6.9 The Estates Service of the Council will consider each informal expression of interest on its merit against the proposed use of the asset and what implications does this have for the Council in terms of asset management. A list of these questions can be found in Appendix C of this policy.
- 6.10 The outcome of this assessment will be reported to the Head of Estates to establish a firm officer recommendation for asset transfer. This also allows a wide range of officer inputs from across the spectrum of services that the Council provides aiding the development of recommendations relating to the disposal.
- 6.11 Should this process consider the asset available for transfer, the interested party will be asked to submit a full asset transfer application including a robust and detailed business case. A sample application form can be found at Appendix D. This is subject to the Council being able to treat directly with the party. If the council is unable to treat directly then the usual process of property disposal may be followed where the interested party may put forward their proposals.
- 6.12 Once an application is received an asset transfer report will be submitted to the Head of Estates together with any relevant business case and financial information along with further information from relevant CEC departments to establish a firm officer recommendation. Terms for the transfer will then be agreed subject to formal approval. Following this the decision to dispose by this format is taken in line with the Council's constitution and delegations.
- 6.13 In certain circumstances, transfers can take place for a nominal value. The Council is able to do this by encumbering the asset and this also ensures that the intent of both parties at the time of transfer is protected. Should the recipient not wish to accept the encumbrances that are designed to protect the asset, the parties may wish to consider at a market value disposal. The recipient will be wholly responsible for the service and the asset save insofar as the Council chooses to take back leases of accommodation within the asset or enter into joint use arrangements or has residual legal responsibilities under contract or legislative provisions.
- 6.14 The length of the lease, restrictions on use, overage provisions and any other addition terms specific to the transfer will be determined on a case by case basis to provide a greater flexibility on terms. These considerations protect the use of the asset and also underpin the ability of the Council to offer assets to interested parties at a less than market value for the asset.
- 6.15 Where Cheshire East services will remain using a transferred asset, it will only be responsible for the general outgoings and repair and maintenance of the premises it occupies and may pay a service charge. No rent or occupancy charge will be paid. Appropriate access and operational arrangements will be agreed.

## **7.0 Assessment of an Asset Transfer application**

- 7.1 Each asset transfer application will be assessed on its merits to determine an outcome which will either result in the application being successful or rejected.
- 7.2 Where an asset has been openly marketed for a community use there may be a choice between a number of competing proposals. In this scenario a scoring mechanism would be created to compare the comparative benefits of any proposals received.
- 7.3 Best practice for setting up any business or launching any venture is the development of a business plan. The Council therefore does not have a defined model business plan but are happy to accept and review the model that the recipient wishes to use. The recipient must have a very clear rationale for their proposal backed by a robust business plan, which demonstrates the recipient's ability to deliver their objectives and manage the asset effectively and needs to include financial and organisational capacity. The Council is happy to provide detailed information about the asset to aid the development of the recipient's business cases, subject to the recipients own due diligence. This will include most recent costs of operation, title information and existing surveys, where these are available.
- 7.4 Although a recipient organisation may choose to have more information in their business plan the minimum the Council will expect to see is set out below:
- The organisational health and capacity of the organisation
  - Benefits and risks to the transfer of the asset
  - The need for transfer and its proposed use, maintenance management and insurance of the asset
  - Business plan for the proposed use including cashflow
  - Liabilities and how these will be managed
  - How progress will be monitored and outline of any 'fall back' arrangements.
  - Statement from sponsoring Council Department
  - Proposed type of transfer, terms of transfer and reasons
- 7.5 The Council will consider the organisational health and capacity of the recipient. Some partners, such as Town and Parish Councils should be able to satisfy these requirements without detailed checks being undertaken. The following will be assessed as appropriate and information should be contained in the business plan;
- How is the organisation managed and governed? Does it have a constitution?
  - What is its status? How long has it been established?
  - Does the organisation have insurance, annual accounts or report?
  - Does it have an Equal Opportunities Policy?
  - Does it have referees?
  - Does the organisation have the expertise to take on the asset – now and in the future?
  - How does the organisation plan to build capacity?
- 7.6 The reasons for acceptance or rejection of an application will be provided to the recipient organisation.

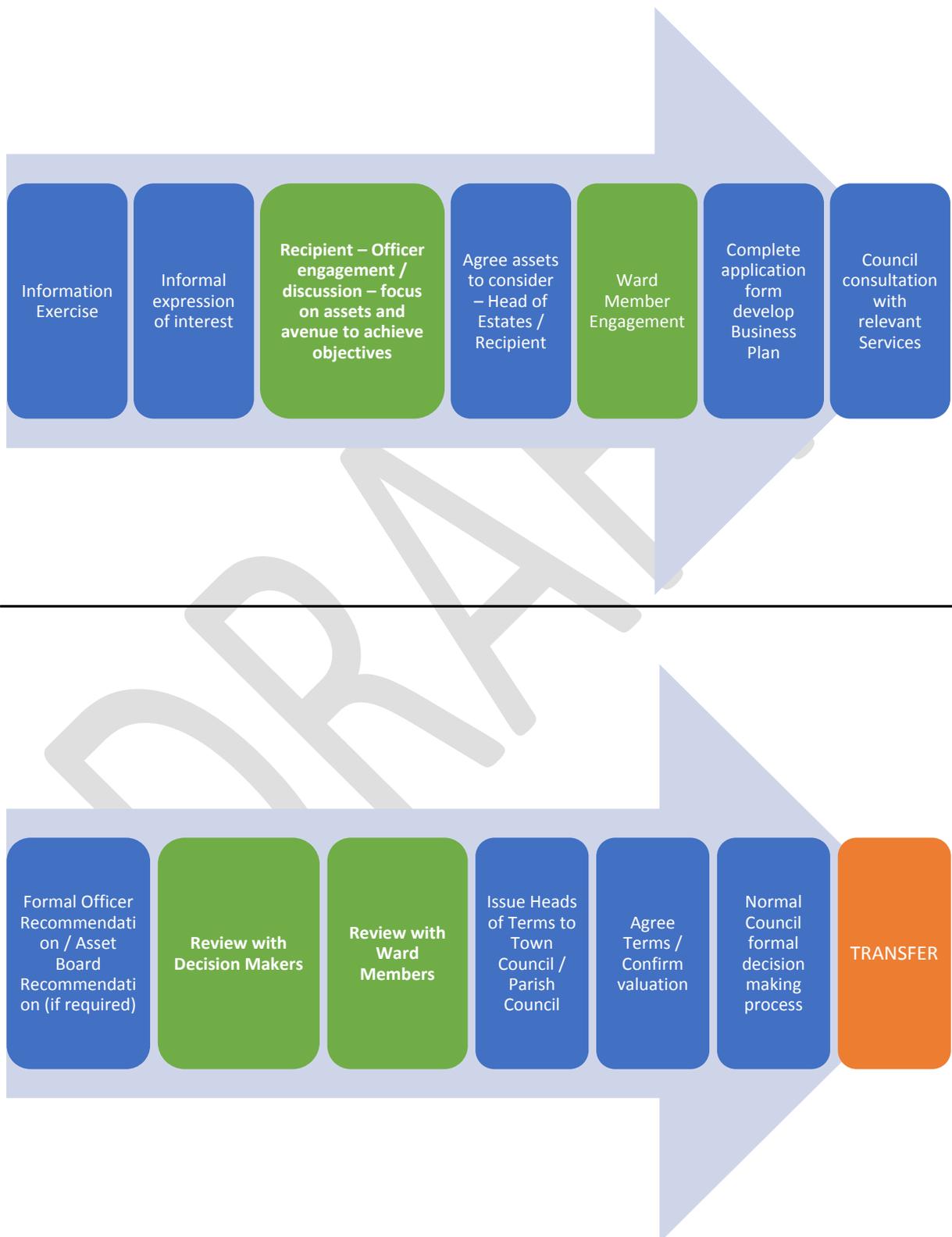
## **8.0 Risk Management and lease clauses**

- 8.1 The Council reserves the right to include conditions to restrict the use or enable the asset to be reverted to the Council to ensure that the property remains in public ownership and ensure continued benefit to the Community. The reason for this step is to ensure that the Council complies with s123 of the Local Government Act and State Aid rules.
- 8.2 Reversion clauses enable the Council to recover the asset from the recipient of the asset and cover a range of instances where the Council may have to step in to ensure an asset remains in public ownership or there is a risk that the asset does not continue to be used for the benefit of the community. Examples of the type of event that may trigger this this type of event would be insolvency, corruption, a material breach of lease covenants, the benefits of the transfer are not realised or serious failing of service provision. The imposition of such conditions can reduce the ability of a recipient to deliver the benefits that they intend and therefore such conditions will be considered carefully during the assessment process.
- 8.3 The Council may wish to include break clauses for redevelopment or regeneration purposes.
- 8.4 It is not the intent of the Council to provide a grant by another means when providing a recipient an asset through the community asset transfer process. Therefore, where appropriate the Council will include a clawback clause in the lease. Should it be the intention of the parties to dispose of a property, once transferred to the recipient, as part of a wider proposal a separate decision will be taken in accordance with the Council's constitution, although the business case will be managed and reviewed through the community asset transfer process.
- 8.5 Town and Parish Councils are partner local government organisations and therefore the presumption is that transfers to these organisations should be less restricted than to other parties. Although terms can be different the issues around s123 of the Local Government Act would remain and may be addressed dependant on the circumstances and at the discretion of the Council by a variety of measures embedded in the transfer terms.
- 8.6 For community organisations the presumption is that an asset transfer will be by way of a lease, except in exceptional circumstances, for example where a considerable investment has been made in the asset. Restrictions will limit the use to a specific community use as set out in the recipient's business case and would require permission for any future disposal (sale or sub lease) and pay a clawback on any future sale, except in exceptional circumstances, which tapers over 25 years.
- 8.7 As part of this policy there is no scope for the Council to enter into direct awards of contracts or provide a financial provision to the receiving organisation. Should a receiving organisation wish to secure funding separately to the transfer process from the Council then it will need to do this independently to this process.
- 8.8 In imposing such conditions the Council will aim to ensure that its decisions are both transparent and consistent and will be made public.

**Appendix A – Flowchart**

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## Asset Transfer Policy- Process



**Appendix B - Informal expression of interest**

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## Asset Transfer Enquiry Form

Please complete the details below and forward to: [property@cheshireeast.gov.uk](mailto:property@cheshireeast.gov.uk).

Once this enquiry form has been received the information provided will be assessed against specific criteria following which an officer will inform you whether the matter can progress to the next stage.

Completing the table on this form will help facilitate a preliminary assessment of your application and establish if there is any benefit in working on a more detailed proposal. This will avoid incurring unnecessary costs in developing any proposals that the Council are unable to support either because they conflict with Council policy or there is a lack of clear outputs and benefits.

### PLEASE READ CAREFULLY

#### Data Protection Act 1988

The details you provide on this form will only be used in connection with your expression of interest Asset Transfer enquiry. Your information will be shared with Elected Members, colleagues within Cheshire East Council and other Voluntary and Community Agencies.

<b>Name and Address of Organisation</b>	
<b>Asset requested</b>	
<b>Registered status</b>	
<b>Proposed use of the asset</b>	
<b>Brief overview of the reasons for the request</b>	
<b>Provide details of any key dates or milestones that you are working to in respect of the request.</b>	
<b>Please provide details of any other matters that you consider pertinent</b>	

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**Appendix C– Initial asset considerations**

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Question	Yes / No	Comments / Additional Information
Is the asset operational?		
What are the views of the relevant service of the Council and that of local ward members? Are they supportive of the proposal?		
Is asset surplus to operational requirements?		
Does the asset have any future / potential regeneration or strategic value?		
Does the asset have any future / potential redevelopment potential / value?		
Does the proposal comply with the constraints placed on the Council regarding property management? Is the proposal aligned to the Council's Policy on Community Asset Transfer? The Council needs to act within the legislative, policy and corporate constraints placed upon it.		
Does the asset generate an income?		
Does the asset have extensive management, holding, maintenance costs which will result in a significant revenue saving for the Council?		
Does the asset have an existing planning designation?		
Does the Council have any statutory processes to follow prior to any transfer?		
Are there any restrictions on title? Assets held by the Council can have a wide range of restrictions placed on them due to the way and purpose the Council holds these assets. For example, there may be restrictions that prevent the Council transferring assets or that constrain the use of an asset for a particular purpose.		
Are there any existing legal interests in respect of the asset? (i.e. leases)		
Is the asset a 'stand-alone' property?		
Is there any retained land adjacent to the asset that may be affected?		
Are there any existing land/property issues? There may be land or property issues which are not apparent at the informal stage. This information would be shared with the applicant to ensure that they had a good understanding of the issues that they may encounter at the earliest appropriate stage in the process.		

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**Appendix D - Full Asset Transfer Application**

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## Asset Transfer Application Form

Please complete the details below and forward to: [property@cheshireeast.gov.uk](mailto:property@cheshireeast.gov.uk)

Attached for your assistance below is a guide to the type of information required in each section.

### PLEASE READ CAREFULLY

#### Data Protection Act 1988

The details you provide on this form will only be used in connection with your expression of interest Asset Transfer enquiry. Your information will be shared with Elected Members, colleagues within Cheshire East Council and other Voluntary and Community Agencies.

Name and address of Local (Town or Parish) Council or organisation	
Name and address of asset	
Length of lease required or are you requesting the devolution of services?	
How is it proposed that the asset will be used to address the priorities of the local neighbourhood?	
How will the asset be used to benefit the local community?	
How will use of the asset link to the priorities set out in the local plan?	
Demonstration that the use of the asset and responsibility for it can be managed, and will be cost-neutral from a Cheshire East Council's perspective	

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Please demonstrate the long-term sustainability of the asset via a business case	
Details of deadlines / timelines which would impact on outcomes.	
Any other information that you consider relevant to support your application.	

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The table below provides a breakdown of the information required to complete the summary section of the application form.

Details of use and circumstances	Specify relevant details
<p><b>Evidence supporting priorities in the local neighbourhood.</b></p>	<p>Add details including:</p> <ul style="list-style-type: none"> <li>• Information relating to the role of your organisation.</li> <li>• Opportunities to engage with the local neighbourhood.</li> <li>• Information of how your community group gathers views of the local community.</li> <li>• How your Council or community group complements local services.</li> <li>• Fill gap in provision locally</li> <li>• Improvement to local services, including evidence of working in partnership.</li> </ul>
<p><b>Information how the asset be used to benefit the local community.</b></p>	<p>Add details including:</p> <ul style="list-style-type: none"> <li>• Main or subsidiary uses, any services, activities offered</li> <li>• level of use</li> <li>• Identity of user groups</li> <li>• Whether local or have a wider significance</li> <li>• Current condition and how it would improve</li> <li>• Network / Franchise / potential Franchise within the Community Hub.</li> <li>• Estimated costs of any repairs / maintenance. Identify how recent this information is,</li> <li>• Assessment of how the proposals will improve the economic and social offer in the locality</li> </ul>

	<ul style="list-style-type: none"> <li>• Funding associated with the asset where conditions on its user ownership may apply.</li> </ul>
<b>Information linked to the priorities set out in the Local Plan.</b>	<p>Add details including:</p> <ul style="list-style-type: none"> <li>• Assessment of how well the proposals contribute to CEC Corporate plan priorities/Themes/Objectives</li> <li>• Details of creating employment in the local economy</li> <li>• Improve skill levels for local people</li> <li>• Support the local economy</li> </ul>
<b>Demonstration that transfer will offer a cost neutral status to Cheshire East Council.</b>	<p>Add details including:</p> <ul style="list-style-type: none"> <li>• Any improvements required to the asset prior to transfer identified and accounted for financially.</li> <li>• Legal fees.</li> <li>• Ongoing maintenance, management within the expenditure of Community Group.</li> </ul>
<b>Long term sustainability</b>	<p>Add details including:</p> <ul style="list-style-type: none"> <li>• Existing contractual or financial obligations on the asset, covenants on the asset etc.</li> <li>• Community empowerment</li> <li>• Promoting a sustainable community and voluntary sector (supporting Community Hub evidence).</li> <li>• Information of any previous asset transfers to your Council or group (case studies),</li> <li>• Plans to expand, volunteering opportunities.</li> <li>• Present an opportunity for a 'non-operational' asset to be used. Represent the best use of the asset particularly in the medium to long-term</li> <li>• Repair and maintenance budgets</li> <li>• Opportunity costs</li> <li>• Funding commitments – applications to support plans and receive financial support from other bodies.</li> </ul>

	<ul style="list-style-type: none"><li>• Existing freehold/leasehold arrangements, other contractual arrangements or any.</li><li>• Information relating to proposed term of lease with CEC.</li></ul>
<b>Timescales / deadlines</b>	Add details including: <ul style="list-style-type: none"><li>• Funding applications dependant on ownership</li><li>• Planning application</li></ul>

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