

Cabinet Member for Regeneration

Agenda

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|---------------|----------------------------------------------------------------------------------------|
| Date: | Monday, 23rd January, 2017 |
| Time: | 9.30 am |
| Venue: | Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ |

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and in the report.

It should be noted that Part 1 items of Cheshire East Council decision making and Overview and Scrutiny meetings are audio recorded and the recordings will be uploaded to the Council's website.

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

For requests for further information

Contact: Cherry Foreman

Tel: 01270 686463

E-Mail: cherry.foreman@cheshireeast.gov.uk with any apologies

4. **Novation of the Fairer Power Contract** (Pages 3 - 8)

To consider the Fairer Power Contract.

5. **Lease of Land to Anson Museum, London Road, Poynton** (Pages 9 - 14)

To consider the disposal of an area of land for use by the Anson Engine Museum.

6. **Land Adjacent to Anson Engine Museum, Poynton** (Pages 15 - 22)

To consider the lease of land adjacent to the museum to Poynton Town Council.

7. **Lease of the Rectory Stables, Wilmslow** (Pages 23 - 28)

To consider the lease of the Stable Block at Wilmslow Leisure Centre.

8. **Lyme View Allotments, Sutton, Macclesfield** (Pages 29 - 34)

To consider the lease of these allotments to Sutton Parish Council.

Cheshire East Council

Portfolio Holder Decision

Date of Meeting: 23 January 2017

Report of: Sophie Thorley, Commissioning Manager, the Skills & Growth Company

Subject/Title: Novation of the Fairerpower contract with OVO to the Skills & Growth Company from Cheshire East Council.

Portfolio Holder: Cllr Don Stockton, Regeneration (in consultation with Cllr Peter Groves, Finance and Assets)

1. Report Summary

- 1.1. Cheshire East Council launched the Fairerpower Energy offering in March 2015 to supply energy primarily to the residents of Cheshire East, but also across the North West and Midlands. The scheme has been successful in its original remit of offering a challenge to the big 6 energy suppliers to increase competition and with enabling access to cheaper energy deals.
- 1.2. In April 2016, the Council established the Skills & Growth Company, which is where the Fairerpower contract is managed on the Council's behalf. Given the company's ability to trade (within defined parameters including, Teckal exemptions), and its current management responsibility of the Fairerpower contract with OVO, it is recommended that the contract is novated to the Skills & Growth Company.
- 1.3. A number of meetings have taken place with the legal team, and the Chief Operating Officer to decide the best way forward for Fairerpower to enable the development and expansion of the brand and partnership; and also to continue to progress the initial aims of Fairerpower. Part of the Fairerpower growth and sustainability strategy is to ensure that as many people can benefit from the scheme as possible. The growth of Fairerpower will support its moral and ethical objectives by ensuring that the costs are minimised and any surplus can be used for fuel poverty initiatives.
- 1.4. The Fairerpower Tariff Board (comprising the Deputy Leader, Councillor Menlove, and the Chief Operating Officer) has been a key element of the governance structure for Fairerpower. The Tariff Board is a project management board which recommends decisions to the Chief Operating Officer around the contract. To date, all changes and developments have been discussed and supported by the Board and where required, Officer Decision Notices have been completed.
- 1.5. The tariff board will remain in its current form. The contract amendment will be led by Skills & Growth and reported to the Fairerpower Tariff Board and,

where required, to the appropriate Portfolio Holder/s. The Director of Legal Services and the Chief Operating Officer have delegated authority to authorise changes to the contract and management of the scheme. Skills & Growth will consult through the Fairerpower Tariff Board on contractual matters so that the Council is fully sighted on decisions.

2. Recommendation

It is recommended that the portfolio holder authorises:

- 2.1. The Director of Legal Services, in consultation with the Portfolio Holder for Finance and Assets and the Portfolio Holder for Regeneration to enter in to an appropriate legal agreements to novate the Fairerpower contract to the Skills & Growth Company, including (as a condition precedent) a Parent Company Guarantee whereby the Council will guarantee the performance of Skills & Growth under the Partnership Agreement post-novation.
- 2.2. The Director of Legal Services to make changes to the Skills & Growth Company contract and management of the scheme to reflect the novation of the Fairerpower contract.
- 2.3. Notes that the Skills and Growth Company will brief through the Fairerpower Tariff Board on any future contractual matters so that the Council is fully sighted on them and reviewed periodically.

3. Other Options Considered

- 3.1. In line with its commitment to grow the energy sector, the Council is committed to supporting the development of Fairerpower and has been successful in its delivery of the tariffs.
- 3.2. Options have been considered with the novation of the contract to the Skills & Growth Company being the preferred option.

Option 1 status quo with the council retaining the contract
Option 2 transfer the contract to Cheshire East Energy Limited
Option 3 transfer to another Alternative Service Delivery Vehicle
Option 4 cease the contract in its current form and redraft it.
Option 5 novate the contract to the Skills & Growth Company

- 3.3. Option 1 is not suitable due to trading constraints. Option 2 is not recommended as the Skills & Growth Company has greater expertise in contract management compared with CEEL. Option 3 is not suitable due to lack of knowledge of the project. Option 4 is not suitable due to the length of time which will be required and not acceptable to the contracting partner OVO.

4. Reasons for Recommendation

- 4.1. Following the Cabinet decision in October 2014, the Council made a commitment to provide energy tariffs to residents to help reduce fuel bill costs and also to address fuel poverty. The Skills & Growth Company was established after Fairerpower was established, therefore; transferring its management to the Skills & Growth Company was not an option at that time. Now that the wholly owned company is now established the Fairerpower contract with OVO is better placed within this vehicle for trading and management purposes. Trading via an ASDV is a more appropriate vehicle than a local authority that has limited scope to develop the brand due to restrictions. The Skills & Growth Company will carry on with the initial vision aims and objectives. The contract with OVO will run until December 2019.

5. Wards Affected and Local Ward Members

- 5.1. All wards

6. Implications of Recommendation

6.1. Policy Implications

- 6.1.1. Fairerpower was developed to tackle fuel poverty and provide access to cheaper energy in Cheshire East. This fits with the objectives of the Council relating to putting residents first
- 6.1.2. The wholly owned companies that Cheshire East owns are developed to allow services to be provided to other local authorities, partners and residents.

6.2. Legal Implications

- 6.2.1. The Skills & Growth Company has more freedoms and flexibilities to trade than the local authority and therefore is a better location for the Fairerpower contract. The Skills & Growth Company has the ability to trade within Teckal exemptions, and given its current management responsibility (as the Council's Agent) of the Fairerpower contract with OVO, it is recommended that the contract is novated to the Skills & Growth Company.
- 6.2.2. All contracts impose rights and obligations on the contracting parties. The Contract contains a clause that allows the unrestricted transfer of the Council's rights (under the Contract) to any company wholly owned by the Council. Crucially the Contract does not allow the unrestricted transfer of the Council's obligations (under the Contract). Therefore in order to transfer the Contract in its entirety to Skills & Growth, OVO Energy Limited's consent (to the transfer the contract to Skills & Growth) has been obtained. OVO has requested that a Parent Company Guarantee be signed by CEC and OVO, to have CEC guarantee the performance of Skills & Growth under the Partnership Agreement post-

novation. The signing of this document is a condition precedent to the Novation Agreement - e.g. it has to be done before the Novation Agreement is enacted.

6.2.3. If the Contract is transferred to Skills & Growth the Council will no longer have a direct legal relationship with OVO. Although the Tariff Board will be briefed on any proposed changes to the Contract, it is Skills & Growth who will be the custodians and controllers of the scheme. The Council will only be able to influence the scheme through the governance structure of Skills & Growth.

6.2.4. The proposed modifications to the Contract are substantial. This could lead to the Contract being challenged by a disappointed tenderer which, if successful, could lead to the Contract being set aside, the award of damages or a financial penalty being imposed on the Council. External legal advice has been sought and the risk of challenge has been deemed low. However, as a private limited company, Skills & Growth Company has more freedoms and flexibilities to trade than the Council.

6.3. Financial Implications

6.3.1. Fairerpower will be delivered within the existing budget as per the medium term financial plan.

6.4. Equality Implications

6.4.1. No material change

6.5. Rural Community Implications

6.5.1. Rural fuel poverty is an issue for rural communities. Therefore by providing lower fuel costs this will assist with this agenda.

6.6. Human Resources Implications

6.6.1. None

6.7. Public Health Implications

6.7.1. None

6.8. Implications for Children and Young People

6.8.1. None

6.9. Other Implications (Please Specify)

6.9.1. None

7. Risk Management

- 7.1. The risk of challenge is low as the initial contract is being novated across to the Skills & Growth Company. This is because the other tenderer for the Fairerpower contract is no longer in business
- 7.2. Effective governance arrangements are in place with the Council and the Skills & Growth Company to ensure the Fairerpower is delivered in accordance with the original contract.
- 7.3. Charging and trading risks are reduced by novating to the Skills & Growth Company.

8. Access to Information/Bibliography

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

9. Contact Information

Contact details for this report are as follows:

| | |
|---------------------|--------------------------------------|
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Cheshire East Council

Portfolio Holder Decision

Date of Meeting: 23rd January 2017

Report of: Executive Director of Place

Subject/Title: Lease of Land adjacent to Anson Road, Poynton.

Portfolio Holder: Councillor Don Stockton - Regeneration

1. Report Summary

- 1.1. Anson Engine Museum approached Cheshire East Council requesting a lease in respect of land adjacent to Anson Road to use as overspill parking, picnic area and ancillary storage.

2. Recommendation

- 2.1. In accordance with section 123(2A), of the Local Government Act 1972 to advertise CEC's intentions to dispose of public open space by way of thirty year lease.
- 2.2. The portfolio Holders for Regeneration & Assets and Communities consider all responses to the public open space advertisements and determine whether to grant the Trustees of Anson Engine Museum a thirty year FRI lease on terms and conditions to be agreed in consultation with the Assets Manager and Director of Legal Services.

3. Other Options Considered

- 3.1. Freehold disposal was considered, however leasehold disposal was considered a better option to retain control over the use of the land.

4. Reasons for Recommendation

- 4.1. The granting of a thirty year lease will provide the Anson Engine Museum with sufficient security of tenure to allow them to apply for heritage grants or indeed any other grants that may become available and be beneficiary to the Anson Engine Museum.

5. Background/Chronology

- 5.1. The subject land (edged red and appended, plan appendix 1), appears to be a derelict brownfield site, overgrown with brambles, shrubs and young trees. It equates to approximately 3,676m².
- 5.2. The Chairman of the adjacent Anson Engine Museum approached CEC that CEC lease the land to them on terms to be agreed. They propose clearing the site, using it as an overspill car park, picnic area and vehicular storage.
- 5.3. The museum's Chairman advised during a site meeting that they could also use the land to accommodate events associated with the nearby canal.
- 5.4. The Anson Engine museum would be responsible of obtaining all necessary consents, including planning consent (if necessary), for their proposed use of the land.
- 5.5. Heads of Terms were sent to representatives of the Anson Engine Museum on a without prejudice basis, offering a thirty year lease to the Museum Trustees, who have confirmed that whilst they would like a slightly larger area, the proposals are acceptable and that they would like to proceed.
- 5.6. Over the past few years the Museum has undergone some major changes and is now recognised as one of the Country's leading specialist museums.
- 5.7. The Museum is situated just South of Manchester on the site of the former Anson Colliery. It is a registered charity and does not receive Government or public funding towards its running costs. To date the work has been carried out and funded by volunteers and friends to the Museum.
- 5.8. The Museum houses a unique collection of over two hundred and fifty gas and oil engines as well as steam engines. Many are maintained in running order and attract enthusiasts from all over the world.
- 5.9. The Museum opens to the public one weekend a month from Easter until the end of October and some visitors bring a picnic and make it a full day out.

6. Wards Affected and Local Ward Members

- 6.1. Poynton East and Pott Shrigley.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. As well as parking and vehicular storage, the proposal is to use the land for picnic and recreational uses, beneficial to the health and wellbeing of the residents of Poynton and Cheshire East.

7.2. Legal Implications

- 7.2.1. 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.
- 7.2.2. The General Disposal Consent 2003 authorises the disposal of land for seven years or more at less than best consideration if the undervalue is £2million or less. If the undervalue is higher than £2million consent to the disposal will be required from the Secretary of State.
- 7.2.3. The Council has the power to grant a lease of the land pursuant to s.123 of the Local Government Act 1972 subject to any disposal of seven years or more being at best consideration that can be reasonably obtained.
- 7.2.4. The Council has a fiduciary duty at all times to the taxpayers and must fulfill this duty in a way which is accountable to local people.
- 7.2.5. 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 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), in state aid over a three year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).

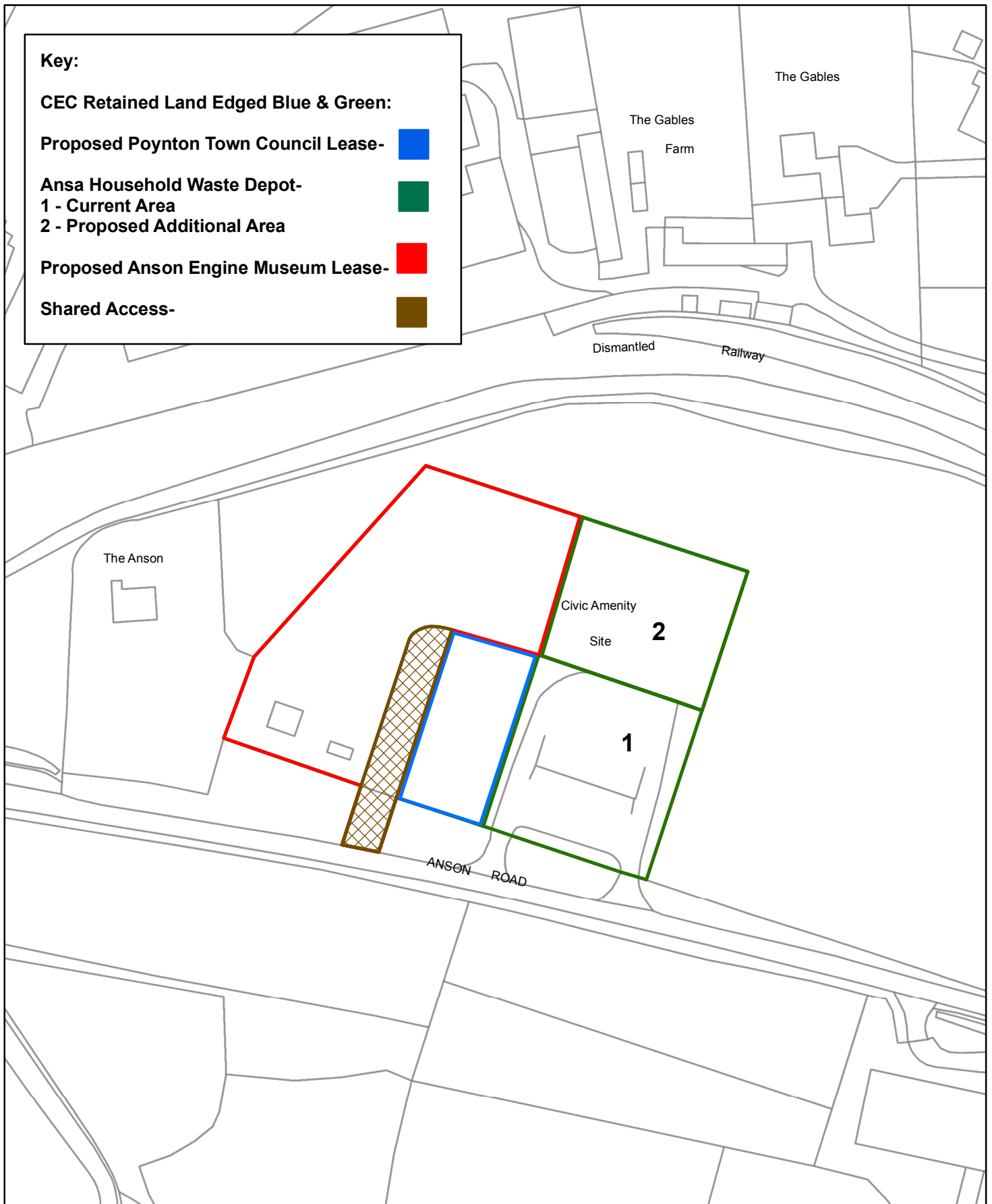
7.3. Financial Implications

- 7.3.1. The land has no commercial rental value in its current condition; Anson Engine Museum will incur all costs associated with clearing the site in making it suitable for overspill parking and picnics. Legislation provides that tenant's improvements are disregarded for rental purposes for a twenty-one year period. Retaining the freehold interest will enable CEC to benefit financially at the end of the lease term should the land ever obtain a higher value planning use.
- 7.3.2. Anson Engine Museum will be responsible for all CEC's professional costs incurred in granting the lease.

8. Contact Information

Contact details for this report are as follows:

| | |
|---------------------|----------------------------------------------------------------------------------------------|
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Land off Anson Road, Poynton



Ref: Land off Anson Road, Poynton - JB
Date: 15/12/16



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CHESHIRE EAST COUNCIL**REPORT TO PORTFOLIO HOLDER - REGENERATION**

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

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 12th July 2016 and on standard terms that were decided by Cabinet on the 5th 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 12th 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 12th 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.

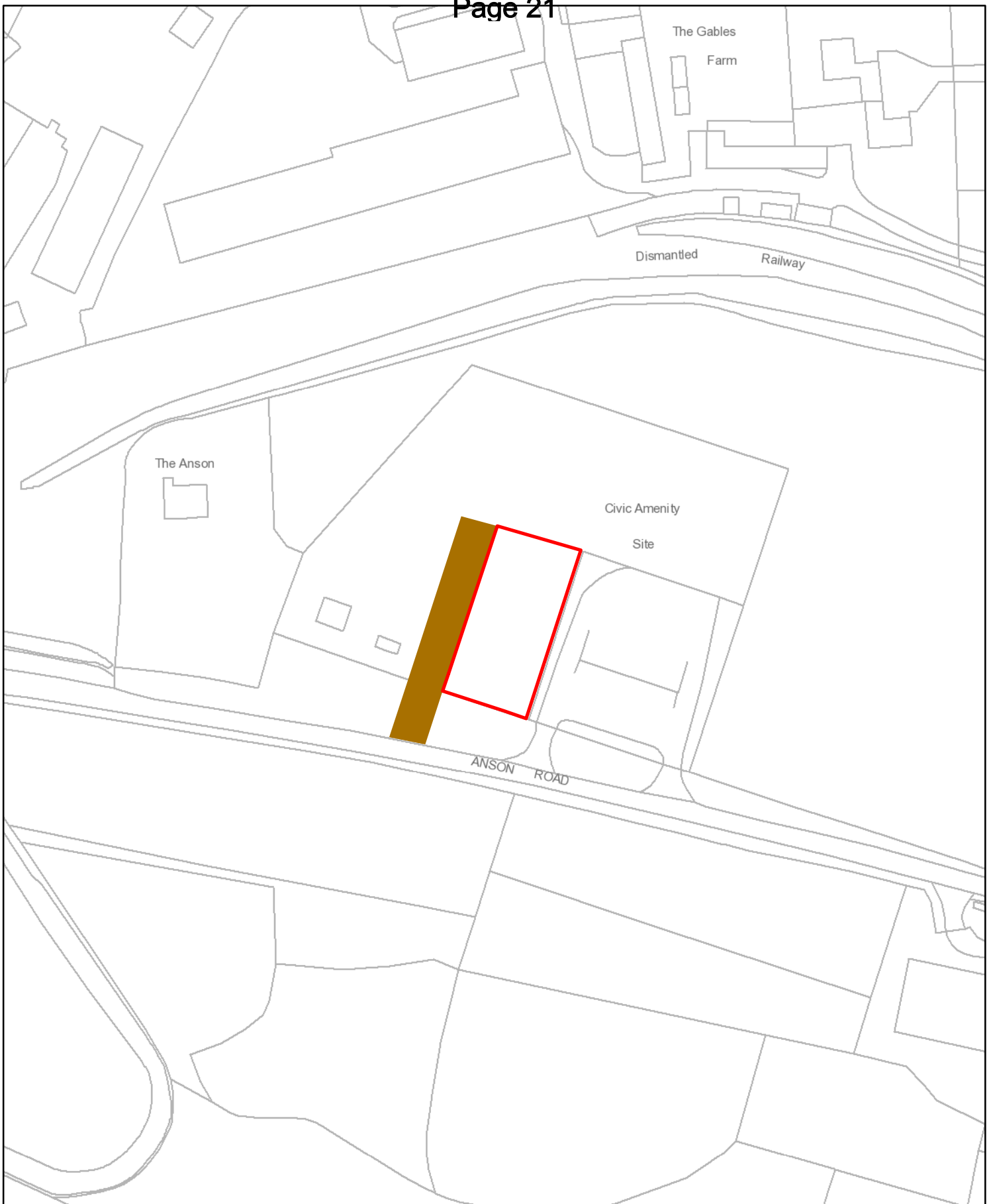
- 10.4 The extent of the land to be leased by Poynton Town Council is shown outlined in red on the attached plan for identification purposes. The Asset Management Service has confirmed that the land is surplus to operational requirements. It has been advised that the proposed lease will be beneficial 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:

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Email: lee.beckett@cheshireeast.gov.uk

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CHESHIRE EAST COUNCIL

PORTFOLIO HOLDER FOR REGENERATION

Date of Meeting: 23rd January 2016

Report of: Executive Director - Place

Subject/Title: Lease of the Rectory Stables, Wilmslow

Portfolio Holder: Regeneration

1.0 Report Summary

- 1.1 The purpose of the report is to seek approval to enter into a 10 year lease with Lyme Design and Build Limited for the Stable Block at Wilmslow Leisure Centre, Alderley Road, Wilmslow.
- 1.2 Offers have been sought from interested parties to use the land on the basis of a 10 year lease. The lease is to include a restricted user clause, will be contracted out of the security provisions (Section 24-28) of the Landlord and Tenant Act 1954 and the Council will insist on a sufficient mutually agreeable break clause in the proposed lease agreement.
- 1.3 The property has been vacant for a number of years and is in need of substantial renovation. The lease will enable Lyme Design and Build Limited to invest in the derelict building and will allow the Council to retain the asset and realise any uplift in value or beneficial use which may be available at a later date.

2.0 Recommendations

- 2.1 It is recommended that Portfolio Holder for Regeneration;
 - 1) It is recommended that Portfolio Holder for Regeneration approves the offer from Lyme Design and Build Limited (LD&B Ltd) Marsland Street Industrial Centre, Hazel Grove, Stockport, SK7 4ER on terms and conditions to be determined by the Asset Manager in consultation with the Director of Legal Services, and,
 - 2) authorise 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 land is deemed to be surplus to the Council's operational requirements.
- 3.2 The grant of a 10 year lease will enable the Council to retain the asset and realise any uplift in value or beneficial use which may be available at a later date.
- 3.3 It is considered that the offer received from LD&B Ltd met the criteria proposed with regard to the proposed rent and lease term.
- 3.4 The availability of the site has been advertised on the open market. Of the deliverable schemes proposed by the interested parties, given the parameters of use for the site it is considered that the value offered by LD&B Ltd will give the best financial receipt to the Council.

4.0 Wards Affected

- 4.1 Wilmslow East

5.0 Local Ward Members

- 5.1 Cllr Rod Menlove

6.0 Policy Implications

- 6.1 The land is considered to be surplus to the operational requirements of Cheshire East Council.

7.0 Financial Implications

- 7.1 Cheshire East Council will receive an annual rent of £7,200 per annum which is to be reviewed at 3 year intervals for the duration of the lease. An 18 month rent free period has been agreed to allow the proposed tenant to undertake improvements and fit out works to bring the property to a tenable condition.
- 7.2 In granting a 10-year lease to LD&B Ltd the Council will retain the asset value of the land / property in question.
- 7.3 The availability of the site has been advertised on the open market. Of the deliverable schemes proposed by the interested parties, given the parameters of use for the site, it is considered that the value offered by LD&B Ltd will give the best financial offer to the Council.

8.0 Legal Implications

- 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 grant a lease of the land pursuant to s123 of The Local Government Act 1972 subject to any disposal for 7 years or more being at the best consideration that can reasonably be obtained.
- 8.3 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.
- 8.4 The disposal terms will be considered on their merits against this legal background to achieve the stated purpose in this report.

9.0 Risk Management

- 9.1 It is considered that the risk would be minimal as the Council will retain the asset value of the land in question for potential disposal or otherwise when the lease comes to an end.

10.0 Background and Options

- 10.1 The area of land in question is approximately 0.0266 acres and is shown on the attached plan. The site comprises a former stable / storage facility which is situated adjacent to Wilmslow Leisure Centre Car Park. The present accommodation is situated on single storey, pitched slate clad roof over brick elevations
- 10.2 The property has been vacant for a number of years and is in need of substantial renovation which would as consequence result in the Council incurring significant costs.
- 10.3 The Council has advertised the property known as Rectory Stables, Wilmslow for a 10 year lease by way of a tender process as this would secure the Council a suitable tenant and proposed use. The Lease will be contracted out of the security provisions (Section 24-28) of the Landlord and Tenant Act 1954.
- 10.4 The Council received eight (8) offers. In the review of the proposals received, consideration has been given to the adherence of the proposed use, to the ability to gain a planning consent and financial value to the Council as well the criteria proposed with regard to the proposed rent and lease term. Following this consideration it is

considered that the offer from LD&B Ltd is the best offer received in best value terms.

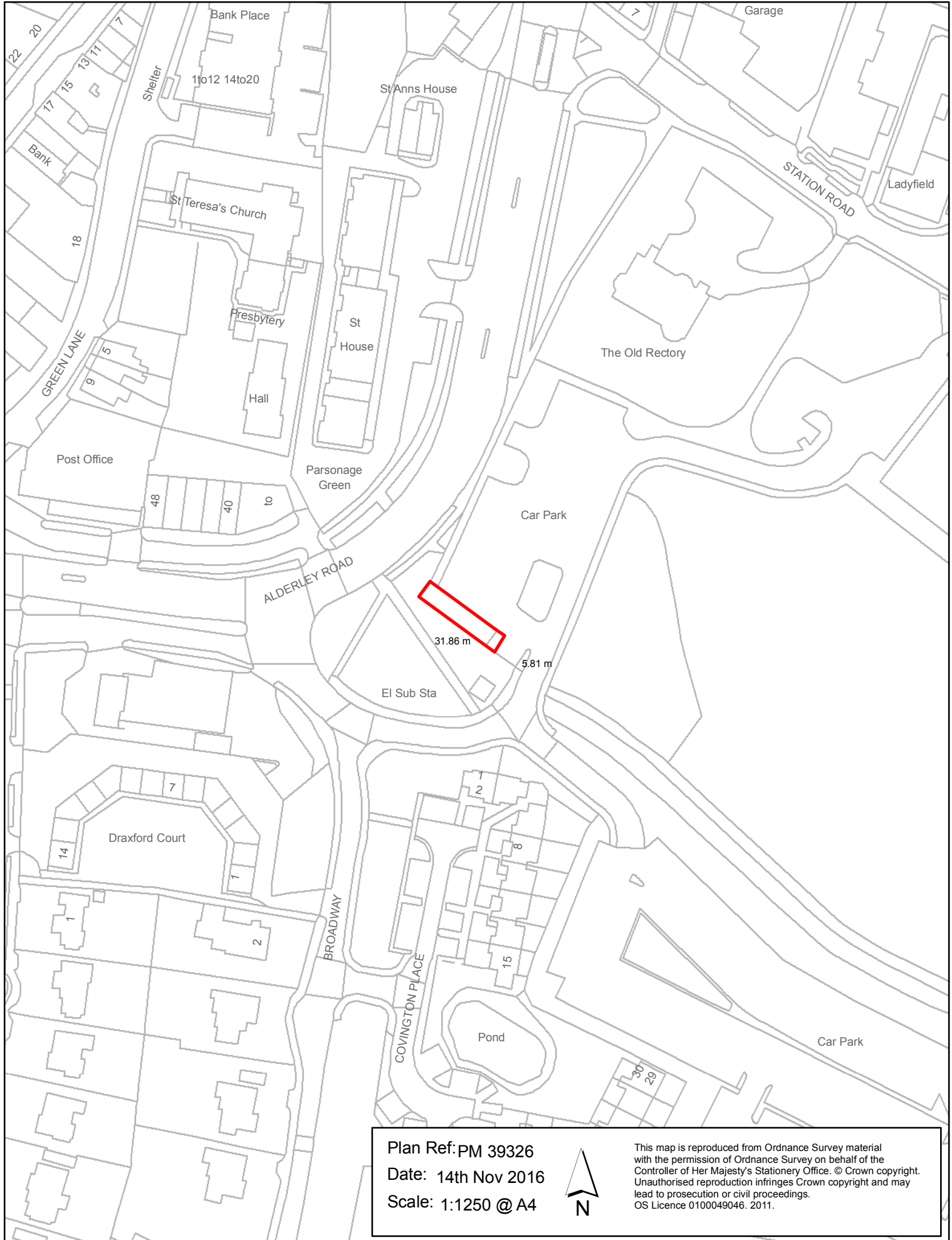
- 10.5 LD&B Ltd proposed use of the site is for an office and storage (B1 use) for residential home improvements, new builds & expansions. LD&B Ltd is proposing to improve and enhance the property and therefore the Council will receive the benefit of a much improved asset.
- 10.6 LD&B Ltd will be responsible for obtaining planning permission for the proposed improvements works and for a change of use (if required).
- 10.7 Letting the property will generate an annual income and relieve the Council of its obligations in terms of future holding costs (throughout the duration of the lease).

11.0 Access to Information

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

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Wilmslow Leisure Centre



Plan Ref: PM 39326
 Date: 14th Nov 2016
 Scale: 1:1250 @ A4



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CHESHIRE EAST COUNCIL**PORTFOLIO HOLDER FOR REGENERATION**

Date of Meeting: 23rd January 2016

Report of: Executive Director -Place

Subject/Title: Lyme View Allotment, Sutton, Macclesfield

Portfolio Holder: Regeneration

1.0 Report Summary

- 1.1 The purpose of this report is to approve the disposal of Lyme View Allotments, Sutton, Macclesfield by way of a 125 year lease as shown edged red on the attached plans to Sutton Parish Council.
- 1.2 This approval falls part of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process and is in line with the previous cabinet decisions dated 5th September 2011 and 12th July 2016 which sets out the framework for disposal of assets by the Council.

2.0 Decision Requested

- 2.1 It is recommended that Portfolio Holder for Regeneration;
 - 1) approves a 125 year lease of the above allotment to Sutton Parish Council for a nominal value, on the terms stated and any other terms to be agreed by the Assets Manager in consultation with the Director of Legal Services, and
 - 2) 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 On 5th 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.
- 3.2 Whilst this falls in line with the Cabinet Decision dated 5th September 2011, which provided consent to transfer a number of assets, this process also falls in line with the Council's general approach to asset transfer and the Cabinet paper dated 12th July 2016 which sets out the framework for disposal of assets and the policy on terms of the disposal.
- 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 lease would protect community use of the asset.
- The lease would have a nominal value (£1) and the Town Council will be wholly responsible for the service and the asset save any residual legal responsibilities of the Council.

3.4 The transfer to Sutton Parish Council will be based upon the standard heads of terms.

3.5 Cheshire East Council (CEC) is committed to delivering services tailored to its individual communities. Lyme View Allotments is a community asset which caters for the different aspects of the community within the parish of Sutton.

3.6 Sutton Parish Council will ensure that this asset is sustainable and will work with the local community to provide the right services, in the right places, at the right times.

4.0 Wards Affected

4.1 Sutton

5.0 Local Ward Members

5.1 Cllr Hilda Gaddum

6.0 Policy Implications including - Climate change - Health

6.1 The transfer is in line with the Councils policy of Local Service Delivery - Transfer and Devolutions to Town and Parish Councils.

7.0 Financial Implications

7.1 The impact of the lease to Sutton Parish Council would have minimal financial impact on CEC budget in 16-17 as there are currently minimal operational costs.

7.2 Once the Allotments have transferred, then all repair, maintenance, utility costs and rates become the responsibility of the Town Council.

8.0 Legal Implications

- 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 no power to dispose of property 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.
- 8.3 It has been confirmed that the value of the above aforementioned site does not exceed £2million.
- 8.4 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
- 8.5 In transferring assets the Council must behave prudently to fulfil its fiduciary duty
- 8.6 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.

9.0 Risk Management

- 9.1 The Council would secure an overage payment for the Council if there is a future planning permission which enhances the value of the asset or the Parish Council sells the asset within a 25 year period with increase in value/ proceeds of sale returning to Cheshire East on a reducing sliding scale.

10.0 Background Information

- 10.1 On the 5th 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 5th September 2011 Cabinet decision.
- 10.4 Sutton Parish Council have approached the Council to see if the Council will dispose of the land in question as part of the as part of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process which falls in line with the agreed policy for the transfer of assets and devolution of services.
- 10.5 The purpose of this request is to enable Sutton Parish Council to enhance the existing allotment facility at Lyme Green, Sutton. Cheshire East Council is committed to delivering services tailored to its individual communities and has a borough wider ambition to create a network that service the local needs of residents by the people who understand their communities best.
- 10.6 In some cases this means moving more to local ownership (which is inline with the original transfer policy) so that the asset can be better utilised and managed for the good of the community.

11.0 Access to Information

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

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LYME VIEW ALLOTMENTS LYME GREEN

Map Ref: 31682
Date: 25th Aug 2015

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