

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	11 th February 2015
Report of:	Executive Director of Economic Growth & Prosperity – Caroline Simpson
Subject/Title:	Notice of Motion – Heyes Lane Allotments
Portfolio Holder:	Councillor Peter Raynes – Finance

1.0 Report Summary

- 1.1 This report requests Cabinet to consider and respond to the following motion, which had been moved by Councillor S Corcoran at the Council meeting on 11th December 2014 and referred to Cabinet for consideration:

This Council commits that it will not agree to vary the lease with Alderley Edge Parish Council for the Heyes Lane site to allow any use other than allotments, unless the Secretary of State exercises any powers that he might have to require a variation of the lease.

2.0 Recommendations

- 2.1 That Cabinet consider the motion referred to in paragraph 1.1.
- 2.2 That Cabinet consider any future variation to the lease in respect of the plans and ambitions of the Parish Council, the legal position regarding the covenants of the land, with the intention of securing the best solution for Alderley Edge.

3.0 Reasons for Recommendations

- 3.1 Allotments play a major role in supporting healthy and prosperous communities.
- 3.2 The Lease of Heyes Lane Allotments to Alderley Edge Parish Council aligns with the first priority of the Sustainable Community Strategy “nurturing strong communities” and is part of Cheshire East’s stated drive to ensure that working locally is at the heart of what the Council does.
- 3.3 The Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process is key to the Councils ‘our residents’ first approach’ to asset management and in line with localism Act which was introduced to create new freedoms and flexibilities for local

government and new rights and powers for communities and individuals.

3.4 The Devolution initiative was implemented to support the view that it is beneficial for local people to choose what services they pay for under devolved services delivered by Town and Parish Councils. Local Town and Parish Councils have acquired allotment plots from the Local Authority which provide the opportunity to establish vibrant community groups and a venue creating a community hub. To date the Council, over the past couple of years has transferred / devolved 11 allotment sites in various parts of the Borough.

3.5 Whilst allotments may appear to suggest activity carried out by an individual, there are many examples of the wider social value they provide; Bringing people together to share a common interest, forming of friendships and involvement of wider members of the local community. Gardening is an activity which is associated with increased neighbourhood attachment, it is an activity that is accessible regardless of income, education, ethnic background and (largely) age and supports social interaction with family, friends and neighbours.

4.0 Wards Affected

4.1 Alderley Edge

5.0 Local Ward Members

5.1 Cllr Frank Keegan

6.0 Policy Implications

6.1 All transfers were in line with the Councils policy of transfer and devolution of asset to Town and Parish Councils.

7.0 Implications for Rural Communities

7.1 Allotments support all communities and although they are mainly focused in urban areas there are strong links to wider rural issues of local food production and supply.

8.0 Financial Implications

8.1 The Council has a duty to obtain best consideration under section 123 of the Local Government Act 1972 for releasing or varying any lease terms where such actions create an increase in value of the land.

9.0 Legal Implications

9.1 The Duty on an Allotment Authority is to ensure that there is sufficient provision of allotments in its area. The Secretary of State has power to

determine if land can cease to be used as an allotment and agree (if there is reason to continue with Allotment provision) a substitution of other land where land has been purchased or appropriated. The Secretary of State under the Allotment legislation does not have the power to vary the terms of a lease, from a Lessor to the Parish Council, nor a lease to Allotment holders from an Allotment Authority. Nor does the Secretary of State have power to remove the interest of a land owner or to restrict their control of that land under the lease

- 9.2 The Small Holdings and Allotments Act 1908- deals with the Provision of Allotments, Powers of Councils and Acquisition of Land.
- 9.3 The Allotments Act 1925 specifies that land purchased or appropriated by local authorities for use as allotments must not be disposed of without Ministerial consent. The Secretary of State must be satisfied that 'adequate provision will be made for allotment holders displaced by the action of the local authority, or that such provision is unnecessary or not reasonably practicable'. (Section 8) Here land has not been purchased or appropriated.
- 9.4 A Parish Council can use s126 of the Local Government Act 1972 to 'appropriate' land to another use. This right is not absolute and is subject to restriction. Sub section 126 (3) provides that the appropriation shall be subject to the rights of other persons in, on over or in respect of the land concerned.
- 9.5 Here such rights to which a s126 decision would be subject are (i) the leasehold rights (to include the rights of this Council as Lessor and owner of the freehold title to determine the use of the land and receive an income) and (ii) the restrictive covenants mentioned in a deed of gift (under which the land was first acquired for use and which specified the uses to which the land could be put) that restrict the use of the land. The deed of gift restricts intended uses of the land to open space, recreation ground, playing fields, allotments, or public gardens.

10.0 Risk Management

- 10.1 If the Council did agree to vary the lease then this may represent a risk to the Council and set precedent to all other Local Town and Parish Councils with regard to the Assets that the Council has already transferred.

11.0 Background and Options

- 11.1 On 5th September 2011 Cabinet approved that a number of properties including Heyes Lane Allotments, Alderley Edge should be transferred to Town and Parish Councils under the first phase of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process.

- 11.2 Heyes Lane Allotments were transferred under a 125 Year lease at a peppercorn rent and on a standard set of heads of terms. These terms included a clause that the only authorised use of the site was for Allotments use only.
- 11.3 Should the Parish Council wish to vary the lease from then, the Council will require full detail of their proposal and financial breakdown, to allow this Council to consider if, any financial consideration is due to this Council in return for varying the lease terms in accordance with section 123 of the Local Government Act 1972.
- 11.4 The opportunities to acquire an allotment have increased in demand and many local authorities have extensive waiting lists for plots for a hobby which has gained a huge national appeal.
- 11.5 A number of benefits have been derived by individual plot holders in addition to growing their own fresh fruit, vegetables and flowers to reduce the impact on their weekly expenditure. Through appropriate management of an allotment plot sufficient food can produce enough food to supplement a family's weekly shop with fresh produce over the year.
- 11.6 In addition to the financial benefits, those keen to tend to an allotment plot benefit from the health benefits from spending time out in the fresh air building up levels of vitamin D. Allotment work has positive effects on the body to ward off illnesses and offers a feel good factor which stimulates physical activity.

12.0 Access to Information

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

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