

## **CHESHIRE EAST COUNCIL**

### **REPORT TO : Jobs Regeneration and Assets Overview and Scrutiny Committee**

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**Report of:** Executive Director Economic Growth and Prosperity

**Subject/Title:** Transfer of Assets/Devolution

**Date of Meeting:**

**Portfolio Holder:** Joint Cllr Don Stockton- Regeneration and Assets and  
Cllr Les Gilbert - Communities

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#### **1.0 Report Summary**

1.1 The purpose of this report is:-

1.1.1 To review the devolution/transfer of assets current position against original cabinet approved lists.

1.1.2 To review the Community Right to Challenge implications in conjunction with the transfer of assets programme.

#### **2.0 Recommendation**

2.1 To note the report and consider whether any further work by the Committee is required.

#### **3.0 Reasons for Recommendations**

3.1 Cheshire East Council approved at Cabinet on 5<sup>th</sup> September 2011 to transfer 50 assets to local Town and Parish Councils in line with the Localism Act and current policy on asset rationalisation. These assets were inherited from the legacy district authorities and it was understood to be more financially viable and closer to the local communities if the local town and parishes were able to take them on and manage them more effectively.

3.2 These assets consisted of Civic Halls, Community Halls, Allotments, Public Conveniences, Indoor/Outdoor Markets and other services such as hanging baskets, Christmas tree/lights, street furniture such as benches and planters. The cabinet approved list of 50 assets was listed as Appendix A on the attached Cabinet paper.

3.3 There was an Appendix B list of 24 Assets which was a 'wish list' from the local Town and Parishes and required further consideration by the Council before a Portfolio Holder decision would be required to approve a transfer. That's 74 proposed transfers in total across both the lists.

3.4 The current position with those lists to date CE has legally transferred 38 of these Assets most of which are from the 'A' list and one from the 'B'. There are currently 26 transfers still in program, 16 are from the original 'A' or 'B' lists

and still awaiting Town/Parish decision on whether to transfer or not. There are currently 10 which are new additional requests which Community Services have or are about to instruct Property Services to consider and seek authority to transfer. These are at differing stages of consideration/approval. The newer requests are from community groups as well as Town/Parishes.

- 3.5 New requests from either Town/Parish Councils or community groups should be considered for their localism/community benefits and against CE's corporate policies, service delivery obligations, the Asset Management Plan and both legal/financial regulations.
- 3.6 If the asset being requested is delivering an operational service and or the Council has a procured service maintaining/running the asset, the transfer of the asset out of the service provision or contract piecemeal could have a knock on affect to the effectiveness of that service and or the cost of delivering it as a lesser offering. The request may also be legally interpreted as a 'Community Right to Challenge' for the right to deliver that service more effectively than the Council. This is very different to asset transfer and is covered by legislative process which involves a properly constituted group being invited to follow a procurement competition to bid for the service delivery. This is even if only one group has requested to do so. There are also TUPE implications that have to be considered and adhered to.
- 3.7 Therefore, CE has been considering each request for asset transfer, that is not on the approved 'A' or 'B' list, to date, on its merits, taking the above implications into account and recommending only those assets for transfer that are not deemed to be service delivery or having a detrimental affect on the operational services or contracts in place in relation to such assets.
- 3.8 Community Services are reviewing the community assets across the Borough and reviewing the current position with the remaining assets on the 'A' and 'B' lists and more recent new additional requests with a view to determining what the Council should do with any Assets off the 'A' and 'B' lists not transferring to the Town and Parish Councils as they do no longer want them following review of them and for working up a consideration matrix for scoring any new requests against criteria and implications detailed herein and against legislative process to determine if a request should be taken forward for recommended transfer or not. Such matrix to be approved by Finance, Legal and operational services implicated to ensure no detriment to operational service, their budgets or contracts as a result. This matrix is still being consulted internally on and is not yet ready for review in this paper.

#### **4.0 Wards Affected**

- 4.1 All

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

- 5.1 All

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

- 6.1 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 we do.
- 6.2 National policy is designed to decentralise government and give communities power to make a difference in their area.

## **7.0 Financial Implications**

- 7.1 The completed asset transfers to date to Town and Parish Councils have been transfers freehold for £1 (Civic Halls, PCs, Indoor Markets) and leasehold peppercorn rent (Allotments, Outdoor Markets) have been transferred with restricted uses and on the freehold with overage deeds to protect CE’s right to claim best consideration on those assets under Section 123 of the Local Government Act if the assets are sold on within 15 years of their transfer from CE.
- 7.2 Some of the transfers to Town and Parish Councils have included minor repairs and improvements on handover and one or two have incurred more substantial repairs to be fair in not handing over in too poor a condition. There is no further budget to support further substantial repairs or improvements in this process and any further requests for financial support in transferring would again have to be considered on its merits and if proven would have to come out of existing ‘stretched’ operational budgets or a budget found.
- 7.3 There is no budget for internal resource to deal with these transfers. They are being dealt with predominantly by Community Services, Property Services, Democratic Services and Legal Services alongside other corporate priority work and prioritised accordingly.

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

- 8.1 Various legal procedures will have to be followed following on from decisions made. Legal consideration will be given at the appropriate time as each matters arises for consideration for disposal; and advice will given tailored for each transaction to the level of authority required under the Constitution. Detailed advice can be given and papers can be drawn once proposals are known as to the extent of the proposed scheme ultimately to be delivered and on the nature of each transaction then specified.
- 8.2 State Aid considerations may fall to be considered, and in some transactions the complexity may involve procurement legislation, and application of the contract procedure rules, for the due diligence information/material, depending on each particular set of circumstances.

## **9.0 Risk Management**

- 9.1 The Council is proposing to continue to work up better matrix procedures for considering further asset transfer requests from both Town/Parish Council's and community organisations each on its merits and taking into account the legalities/budgetary implications/service delivery of any operational services/contracts that may be affected by the requests.
- 9.2 The Council could be in breach/subject to challenge if legal/financial/procurement regulations and due diligence on each request is not undertaken and the correct procedures followed.

## **10.0 Background**

- 10.1 The Localism Act 2011 was introduced to empower local communities to look at shaping and running their own local services and assets. There are a few different aspects of this legislation:
  - 10.1.1 Asset Transfer of surplus land or buildings (no service delivery)
  - 10.1.2 Community Right to Challenge – delivery of services (subject to procurement legislation)
  - 10.1.3 Community Right to Bid - Assets of Community Value (registering them for protection whether publicly owned or not)
- 10.2 CE has a Community Asset Transfer Policy/Guidance document available already which highlights the procedure for application and considerations to be detailed, see attached. Communities Service are also reviewing this document to reflect the issues and implications herein and in accordance with a new matrix for assessing each request whether it be from a Town/Parish Council or Community organisation. Formal decisions to transfer an asset have to follow constitutional delegation and are, subject to value, usually formal Portfolio Holder decisions and following new Cabinet allocations to be joint decisions by the Portfolio Holders for Regeneration & Assets and Communities.
- 10.3 CE has an established procedure and online application form for the Community right to Bid to register assets of community value and each request is reviewed and considered on its individual merits in accordance with the legislation and criteria for assessment.
- 10.4 The newly created Town Councils at Crewe, Wilmslow and Macclesfield also have transfers to be considered and the legislation and circumstances surrounding these transfers are also in programme and being managed by CE as another strand of this legislative process.

## **11.0 Access to Information**

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

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### **Attachments:**

Cabinet Paper – 5<sup>th</sup> Sept 2011  
Appendix A  
Appendix B

Current Programme – Asset Transfers

### **Other Background Documents:**

Community Asset Transfer Policy/Guidance

Community right to Challenge – Statutory Guidance