

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting: 12th July 2016
Report of: Head of Communities/Head of Asset Management
Subject/Title: Asset Transfer Framework
Portfolio Holder: Councillor Don Stockton – Regeneration

1.0 Report Summary

- 1.1. On the 5th September 2011, Cabinet approved a list of asset transfers and principles of asset transfer to local Town and Parish Councils. The cabinet approved list of 49 assets as Appendix A for transfer; of these 36 have been transferred, 5 are pending and 8 are no longer proceeding for practical reasons. There was an Appendix B list of 24 Assets which required further consideration by the Council on a case by case basis before a Portfolio Holder decision would be required to approve a transfer. The Council has also received new proposals/requests for Asset transfers since the 2011 Cabinet decision.
- 1.2. This follow on report seeks to build on the success of the work undertaken to date and recommend how to effectively and efficiently deal with the pending cases and future asset transfer requests via the introduction of an Asset Transfer Framework and a Land and Property Lease/Disposal Framework. In addition to achieving this objective the framework will also set out the general approach taken by the Council when dealing with commercial property transactions.
- 1.3. As a Residents First Council, we wish to strengthen our commitment to asset transfers in supporting Town and Parish Councils and voluntary organisations to make improved use of Council assets in order to benefit local residents in the communities they reside. This approach will also make the Council's general approach to commercial property transactions clearer, aiding residents and those wishing to invest in the Borough.
- 1.4. Cheshire East Council, in adopting an Asset Transfer Framework and Land and Property Lease/Disposal Framework, will provide a clear and transparent process to fully assess, prioritise and progress transfer requests received to date. The introduction of a work programme will ensure cases are progressed in a priority order establishing a system, which can be integrated and embedded as a model of best practice within the Council.

2.0 Recommendations

- 2.1 That Cabinet approves the Asset Transfer Framework, and the Land, and Property Lease/Disposal Framework as presented in Appendix 1 and 2.
- 2.2 That Cabinet acknowledges and approves that all pending/new cases will be programmed and considered via the Asset Transfer Framework and be subject to the Land and Property Lease/Disposal Framework.
- 2.3 That authority is thereafter delegated to the Portfolio Holder for Regeneration and Assets to approve the terms for any further pending or new requests for transfer of assets, in consultation with the Portfolio Holder for the relevant service and the Executive Director – Place and authorise the legal completion of those asset transfers in accordance with the Council's Constitution.
- 2.4 That Cabinet approves the general approach set out for commercial property transactions.

3.0 Other Options Considered

- 3.1 The existing practices of dealing with asset transfer applications are reviewed on a case-by-case basis. The risk of this process is that the Council is open to challenge and scrutiny of how it prioritises and determines current caseloads and decides upon terms of transfer.
- 3.2 Not adopting this approach gives the Council greater flexibility. However, this also increases customer uncertainty and reduces the Council's capacity to progress through caseload in a systematic and prompt manner. Not adopting this approach will also reduce the Council's ability to progress efficiently through the required property transactions, increasing the burden on resources without necessarily changing the outcome for residents.

4.0 Reasons for Recommendations

- 4.1 The Asset Transfer Framework is underpinned by the following key principles:-
 - A transparent corporate process for community asset transfer and transfer of management, which includes a clear point of first contact, followed by a structured process.
 - In implementing its framework, the Council recognises that, with appropriate support, community led solutions can achieve better outcomes than central initiatives.

- The Council recognises the advantage of appropriate terms and of tenure, (with appropriate and proportionate safeguards and audits) to enable applicants to adapt and change over time in response to community needs.
- Recognising the wider community benefits derived from asset transfer applications.
- The Council will use the community asset framework as a means of enabling all Local Community Groups/Organisations to become sustainable on a long-term basis.
- Applicants must be able to demonstrate a detailed Business Case for the transfer and have the legal capacity to hold assets.
- To be successful, and minimise risk, the framework requires a long-term partnership commitment on the part of the Council and the Community Group/Organisation. A transfer must proceed on a cost neutral basis to the Local Authority.
- The asset be transferred in its current condition and applicants will be responsible for the management and day-to-day operation of the asset on transfer.
- Asset Transfers are a sub set of general property transactions that the Council undertakes. To avoid ambiguity and uncertainty for residents it makes practical sense also to define the general approach for commercial transactions within this report.
- This paper sets out the Council's general approach to property transactions and therefore generates increased certainty for third parties dealing with the Council. Appendix 3 provides a summary of these transactions.

4.2 The Land and Property Lease/Disposal Framework is underpinned by the following key principles:-

- 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. This list is not exhaustive and the policy is intended to protect Cheshire East Council's fiduciary duty in exercising its powers and authority with regard to land and property transactions and considerations
- Consistent with the 2011 Cabinet paper, freehold transfers will continue to be at nominal value, subject to overage for 25 years for Civic Halls and Community Centres transferring to Town and Parish Councils. This framework does not change those principles.

- The principle of continuing to offer allotment land for transfer on long leases (125 years), to enable legal rights and responsibilities of either side to be set and in particular the permitted user clause to be restricted will also remain consistent with the 2011 cabinet paper.
- Newly created Town and Parish Councils by virtue of Government legislation will have allotments transferred freehold without overage as the legislation provides for them to automatically vest with that newly created Council upon its creation. Cheshire East Council are only able to put in place procedures to protect retained land, rights of access for retained land and to protect restrictive covenants for retained land.
- Transfers of markets and public conveniences to remain the same as the 2011 cabinet paper, upon agreement, dependant on the circumstances: if transferred freehold, to be at nominal value, subject to overage for 25 years, the same as the Civic Halls and Community Centres as detailed above.
- Any assets (excluding allotments) approved for transfer by leasehold only will now be on shorter lease terms: 30 years, to reflect legislative changes to covenant enforceability. In exceptional circumstances such as evidence of substantial capital investment or written requirements of an external funder a longer term of lease term will be considered. Reversionary terms to protect latent land value will be applied to those leases.
- Transferees will be wholly responsible for the asset costs and transfers to be cost neutral to Cheshire East Council.
- Any leasebacks to Cheshire East Council to be on service charge basis only, no rental to be charged to Cheshire East.
- Village green applications will follow its statutory and legislative process which is well established and separate to this asset framework.
- No parking to transfer unless essential to sustainable running of the facility authorised to transfer.

5.0 Background/Chronology

- 5.1 The Localism Act of 2011 sets out a series of measures with the potential to offer new rights and powers for voluntary organisations to be able to make decisions for themselves and take responsibility to benefit their local communities.

- 5.2 The Council supports strong and sustainable voluntary and community sector organisations as key partners in the delivery of services and is committed to working in partnership to support communities to address local priorities.
- 5.3 Encouraging asset transfers supports CEC's key community outcomes, by developing stronger communities, with devolved power to local communities, and empowering local people to take charge of local assets and services.
- 5.4 With reduced local government spending, transferring assets to Town and Parish Councils and other voluntary organisations offers a way of removing council costs to the benefit of allowing local communities to provide improved and sustainable services.
- 5.5 The Council has already successfully achieved asset transfers with a number of Council owned assets and the introduction of an asset transfer framework intendeds to improve the Councils responses to applicants and set clear objectives throughout the application process.
- 5.6 Adopting an Asset Transfer Framework has a range of benefits including:-
- A single gateway approach providing a clear point of contact at Cheshire East Council for applicants.
 - Notification to applicants and the appropriate Ward Member/s on the receipt of an asset transfer application.
 - A quick assessment to identify the priority of asset transfer application within an 8 to 10 week period of receiving the application.
 - The provision of a fair and accountable system and a clear decision making process based on strong evidence
 - Notification to the Town and Parish Council or voluntary organisation on the submission of the asset transfer request of a date when an initial decision will be made.
 - CEC departments working collectively to assess and prioritise asset transfer applications to ensure a holistic response is provided and the outcomes are linked to the Council's strategic outcomes.
 - Set criteria established at the outset for applicants to understand the roles and responsibilities of both parties.
 - A focus on internal and external communication, including information relating to expected timescales to completion.

- Supporting community groups with advice and information throughout the process and the development of a CEC website to assist applicants with the application process.
- 5.7 Cheshire East Council is leading the programme working closely with our partners to develop vibrant and strong communities which are shaped and developed by local communities, providing the right services in the right place, at the right times. The asset transfer framework takes account of those applications with direct links to this work and appropriately assesses the information provided against the 'Scoring Matrix'.
- 5.8 The introduction of an asset 'Scoring Matrix' will determine how the application meets criteria set by the Council and identify its priority against other applications received.
- 5.9 A number of Town and Parish Councils and voluntary organisations have been contacted as a result of their interest in acquiring council owned assets and assessments have been undertaken using the 'Scoring Matrix' which has assisted in determining their priority on a programme of work.
- 5.10 Outcomes of the 'Scoring Matrix' will form part of the information together with supporting evidence received from relevant CEC departments making up the Community Asset Group to decide whether an application is to progress to requiring a Business Case submission.
- 5.11 The asset transfer framework and governance arrangements supporting the application process has been established through close consultation between senior officers within Cheshire East Council. A copy of the Asset Transfer Framework Document accompanies this report and details of the Governance process is provided on separate pages at the end of this report.
- 5.12 As the Council also deals with commercial property transactions, it is appropriate to capture general property transactions in this report to avoid ambiguity.

6.0 Wards Affected and Local Ward Members

- 6.1 The recommendations relate to all wards and all members within Cheshire East.

7.0 Implications of Recommendation

7.1 Policy Implications

- 7.1.1 There are no policy implications. The Council has the ability to dispose of property as set out in the legal implications section below. This

approach allows a consistent approach to dealing with property transactions in general and specifically asset transfers, enabling the Council to achieve its existing aims, objectives and policies in the most efficient way possible.

7.2 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, 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 7 years or more at less than best consideration if the undervalue £2million or less, if the undervalue is higher than £2million consent to the disposal is required by the Secretary of State.
- 7.2.3 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 the best consideration that can be reasonably obtained.
- 7.2.4 Notwithstanding the above powers the council has a fiduciary to the taxpayers and must fulfil 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 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 £155,849.99 (as at 16th March 2016) (20,000 Euros) in state aid over a 3 year period than the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).
- 7.2.6 Based on the above, due consideration will need to be given separately to each transaction based on the spirit and the intendment of the commitments outlined in this paper and the aspirations, powers and obligations of the Council arising at the relevant time. If necessary, separate reports will have to be made for relevant Council authorities to be obtained.

7.3 Financial Implications

- 7.3.1 All expressions of interest received within the proposed Asset Transfer Framework will be met using existing staffing resource within CEC.
- 7.3.2 All The Asset Transfer Framework contains a condition that any transfer of assets must proceed on a cost neutral basis to Cheshire East Council.
- 7.3.3 Financial Implications of specific asset transfers need to be considered on a case-by-case basis and will be subject to separate Cabinet reports when the need arises.

7.4 Equality Implications

- 7.4.1 An Equality Impact Assessment has been completed and is available upon request.

7.5 Rural Community Implications

- 7.5.1 There are no specific implications on the rural community.

7.6 Human Resources Implications

- 7.6.1 The recommendations would be undertaken within existing Council budgets and resources.

7.7 Public Health Implications

- 7.7.1 There are no public health implications.

7.8 Other Implications (Please specify)

- 7.8.1 There are no other implications.

8.0 Risk Management

- 8.1 The processes included within the asset transfer framework mitigate against any areas of risk.

9.0 Access to Information/Bibliography

- 9.1 Access to more information is available by contacting the report writer.

10.0 Contact Information

Contact details for this report are as follows:

Name: Richard Christopherson
Designation: Impact Manager
Tel. No.: 01270 685881
Email: richard.christopherson@cheshireeast.gov.uk