

CHESHIRE EAST COUNCIL

CABINET MEMBER FOR REGENERATION

Report of: Executive Director Economic Growth and Prosperity
Subject/Title: Macclesfield Statutory Transfers
Date of Meeting: 16 August 2016
Portfolio Holder: Councillor D Stockton, Cabinet Member for Regeneration

1.0 Report Summary

- 1.1 An approval is required to transfer seven allotment sites which are detailed below and as shown edged red on the attached plans as part of the Local Service Delivery -Transfer and Devolutions to Town and Parish Councils process. This approval is by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008.

1. Park Grove Allotments, Macclesfield
2. Byron Street Allotments, Macclesfield
3. Stamford Road Allotments, Macclesfield
4. Springfield Road Allotments, Macclesfield
5. Laburnam Road Allotments, Macclesfield
6. Brookfield Lane Allotments, Macclesfield
7. Birtles Road Allotments, Macclesfield

- 1.2 This will enable any existing or required rights to be retained for the Councils adjacent land and dealt with in the legal documentation as opposed to allowing the vesting and registration to occur. This will also allow the extent of the assets to be transferred to be defined.

2.0 Decision Requested

- 2.1 To dispose by way of a freehold transfer the above allotment sites to Macclesfield Town Council for a nominal value, on the terms stated in 3.4 and other terms to be agreed by the Assets Manager in consultation with the Portfolio Holder and Director of Legal Services pursuant to the provisions of s.99 of the Local Government and Public Involvement in Health Act 2007.

- 2.2 To authorise the Director of Legal Services to enter into and sign all necessary documents to give effect to those agreements reached and to vest the land interests.

3.0 Reasons for Recommendations

- 3.1 The Cheshire East Council Reorganisation of Community Governance (Macclesfield) Order 2015 confirmed that Macclesfield Town Council was to be formed. Schedule 2, Article 11 of this order identified a number of properties including seven Allotments, Weston Community

Centre and two Public Conveniences. Other assets in this grouping will be considered in a following report.

- 3.2 As Macclesfield Town Council has been created by an Order, then the Allotments are already vested in the Town or Parish Council by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008.
- 3.3 Whilst this falls in line with the Cabinet Decision dated 5th September 2011 for the transfer of assets and devolution of services to Town and Parish Councils, this process for these asset transfers is a separate process by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008.
- 3.4 The Council is proposing to deal with these transfers to Macclesfield Town Council by way of a freehold transfer to enable any existing or required rights to be legally retained for any of the Councils adjacent land being retained and dealt with in the legal documentation as opposed to allowing the vesting and registration to occur. The reason for this is the Council is seeking to manage the transfer of the property so that the rights which need to pass with the possession of the land (and those retained) such as right to light, and easements such as the flowing of water and drainage etc are agreed and recorded and the boundaries of each of the parcels of land are clearly agreed and identified to ensure better enjoyment of the land vesting. This is also required to protect the beneficial use of and enjoyment by the Council of the land retained. This will also enable the exact areas of the assets of to be defined and this will reduce any risk.

4.0 Wards Affected

- 4.1 Macclesfield Central
- 4.2 Macclesfield South
- 4.3 Macclesfield West and Ivy
- 4.4 Macclesfield East
- 4.5 Broken Cross and Upton

5.0 Local Ward Members

- 5.1 Cllr Beverley Dooley
Cllr Janet Jackson
Cllr Chris Andrew
Cllr Laure Jeuda
Cllr Alift Harewood
Cllr Nicholas Mannion
Cllr Mick Warren
Cllr Liz Durham
Cllr Martin Hardy

6.0 Policy Implications

- 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 transfer to Macclesfield Town Council would only have a marginal financial impact on CEC budget in 16-17 as there are currently minimal operational costs for these assets.
- 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 By Regulation 9 of the 2008 Regulations, it is provided that where immediately before the Order date, land in an area constituted as a parish by a reorganisation order is held by a principal council for any purpose of the Allotments Acts 1908 to 1950 or is vested in a principal council and used for those purposes, it shall on the order date transfer to and vest in the parish council for that parish or, if there is no such council, the parish meeting for that parish. As Macclesfield Town Council has been created by an Order, then the Allotments are already vested in the Town or Parish Council by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008. The exact area of the land and the rights associated with the vesting though have not clearly been identified and agreed between the parties.
- 8.2 Regulations made under S.97 of the Act may include provision with respect to the transfer, management or custody of property and provision with respect to the transfer of functions, property, rights of liabilities. The Council is seeking to manage the transfer of the property so that the rights which need to pass with the possession of the land (and those retained) such as right to light, and easements such as the flowing of water and drainage etc are agreed and recorded and the boundaries of each of the parcels of land are clearly agreed and identified to ensure better enjoyment of the land vesting. This is also required to protect the beneficial use of and enjoyment by the Council of the land retained.
- 8.3 The statute also provides that in default of agreement about any disputed matter, the matter is to be referred to the arbitration of a single arbitrator agreed on by the parties or in default of agreement appointed by the Secretary of State.
- 8.4 The Council is being invited to regulate the transfers of the land interests in a controlled way, pursuant to the Order by approving the transfers by agreement under s99 of the Act.

9.0 Risk Management

- 9.1 Cheshire East Council is not proposing to carry out any further improvements to the allotments that the Council considers not to be a priority due to budgetary implications. There is a risk that Macclesfield Town Council will be unwilling to enter into the proposed freehold transfer unless CEC deal with these issues first.

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 These assets were not on either of the Appendix A or Appendix B property lists approved to transfer in the 5th September 2011 Cabinet decision. The process by which they would be transferred to the relevant Town / Parish Councils is different as set out in paragraph 10.3 to 10.5 below.
- 10.3 Macclesfield Town Council was created in April 2015 as a result of the Reorganisation of Community Governance (Macclesfield) Order 2015. As Macclesfield Town Council has been created by an Order, then the Allotments are already vested in the Town or Parish Council by virtue of The Local Government (Parishes and Parish Councils) (England) Regulations 2008. The regulations apply to every Reorganisation Order including the 2013 Order unless varied by agreement pursuant to s.99 Local Government and Public Involvement in Health Act 2007.
- 10.4 Regulation 9 of the 2008 Regulations, it is provided that where immediately before the Order date, land in an area constituted as a parish by a Reorganisation Order is held by a principal Council for any purpose of the Allotments Acts 1908 to 1950 or is vested in a principal Council and used for those purposes, it shall on the order date transfer to and vest in the Parish Council for that parish or, if there is no such Council, the parish meeting for that parish.
- 10.5 The Council is therefore proposing to deal with these by way of a freehold transfer to enable any existing or required rights to be retained given the Councils adjacent land being retained.

11.0 Access to Information

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

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