

CHESHIRE EAST COUNCIL

REPORT TO PORTFOLIO HOLDER - REGENERATION

Date of Meeting: 18 April 2017

Report of: Executive Director of Place

Subject/Title: Cheshire Street Playing Fields, Audlem

Portfolio Holder: Regeneration

1.0 Report Summary

- 1.1 This report outlines a proposal to transfer Cheshire Street Playing Fields, Audlem (shown edged red on the attached plan) to Audlem Parish Council by way of a 99 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 99 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.
- 1.3 In addition to the 99 year lease, the Council is to enter into a deed of dedication with Audlem Parish Council and The National Playing Fields Association operating as the Fields in Trust (FIT) to restrict the use of the playing field as public playing field and recreation ground only.

2.0 Recommendations

- 2.1 It is recommended that the;
 - 1) Portfolio Holder for Regeneration approves the transfer of Cheshire Street Playing Fields, Audlem (shown edged red on the attached plan) by way of a lease of up to 99 years for a peppercorn rent to Audlem Parish Council on terms and conditions to be determined by the Assets Manager in consultation with the Director of Legal Services.
 - 2) Portfolio Holder for Regeneration approves the Council entering into a deed of dedication with Audlem Parish Council and Fields in Trust on terms and conditions to be determined by the Assets Manager in consultation with the Director of Legal Services.
 - 3) Cheshire Street Playing Fields, Audlem (shown edged red on the plan attached to the Report) ('the Land') be advertised as a disposal of public open space.
 - 4) 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 99 years to Audlem Parish Council following the statutory

process and due consideration of the responses to the open space advertisements.

- 5) The Portfolio Holder for Regeneration notes that any leasehold transfer of the Land and deed of dedication 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.
- 6) The Portfolio Holder for Regeneration authorises the Director of Legal Services to approve all legal documentation and proceed to practical completion of the lease, deed of dedication and any other legal documentation required ancillary to the lease and deed of dedication.

3.0 Reasons for Recommendations

- 3.1 The subject land will continue to be used as a playing field by members of the public. Audlem Parish Council is keen to enhance the use of the current playing fields and protect its future use. By entering into a lease and a deed of dedication, it is envisaged that this will restrict the use as public playing field and recreation ground only.
- 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 Delivery -Transfer and Devolutions to Town and Parish Councils process. 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 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 In respect of the term, it was reported to Cabinet in the July 2016 paper that 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. In order to secure the longevity of Audlem Parish Council, its fixtures and the continued investment in its buildings and playing field, Audlem Parish Council is seeking to negotiate a new 99 year lease from the Council, in order to continue to offer the facilities and to secure funding and investment in their facilities into the future.

3.5 Cheshire East Council is not statutorily required to transfer this piece of land to the Audlem Parish Council. As a result, the transfer 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 Parish Council to lease the land for the required purpose.

4.0 Wards Affected

4.1 Audlem

5.0 Local Ward Members

5.1 Cllr Rachel Bailey

6.0 Policy Implications including - Carbon reduction - Health

6.1 The 99 year lease is in line with the Council's policy under the exceptional circumstances rule (evidence of substantial capital investment or written requirements of an external funder a longer term of lease term will be considered) of transfer and devolution of assets to Town and Parish Councils for a nominal value.

7.0 Financial Implications

7.1 Granting a new ninety-nine year lease on full repairing and insuring terms would ensure that the costs in maintaining, repairing and insuring the land/property would be met by the tenant rather than by CEC. Therefore Cheshire East Borough Council will no longer be responsible for the Asset.

7.2 By granting a new ninety-nine year lease and entering in to a deed of dedication with FIT, the Council proposes to forego the capital receipt as a premium and / or rent in this instance to support this request.

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 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. Both the Lease to the Parish Council and the Dedication to FIT is a disposal for the purposes of s123 Local Government Act 1972
- 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 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
- 8.7 As the land is open space then it will be necessary to advertise the potential disposal of the land 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.
- 8.8 Following a dedication to FIT the Council will remain as the legal owner of the freehold and Audlem Parish Council, the Lessee, but the

beneficial title to the site will be vested in FIT. FIT's preference is for the dedication to be in perpetuity (forever) rather than being limited to a set period of time. This means that the restrictions imposed on the sites, as detailed in this report, will continue to bind the land forever even after the lease to the Parish Council expires.

- 8.9 By dedicating sites to FIT the use and subsequent disposal of those sites will be completely restricted by FIT and the terms of the deed of dedication.
- 8.10 Should the CEC or the Parish Council need to install additional facilities and buildings on the site the Parish Council will need to obtain the consent of FIT first, who may or may not consent, although the deed includes a clause to confirm that they will not unreasonably withhold their consent, provided that the additional facilities do not go against FIT's charitable aims of providing and promoting open spaces. Without their consent the Council would be unable to install such additional facilities. Consideration needs to be given to this provision as the Council will not be free to do as it wishes with the land without first consulting FIT. It is likely that FIT may require their costs to be paid for dealing with such consent whether or not this is granted.
- 8.11 Should the Council need to dispose of any of the dedicated sites in the future FIT would need to firstly provide consent to such a disposal and should they grant consent they would require the Council to provide an alternative site of equivalent or better quality in terms of facilities and size, and it must serve the same catchment area as the current site and be as accessible to the public as the current site. FIT will also require the Council to apply as much of the proceeds of the disposal as are necessary in order to provide this alternative site. FIT will also require the Council to enter into a deed of dedication for the alternative site on the same terms as the current site.

9.0 Risk Management

- 9.1 In accordance with legal advice above we perceive there to be no legal risk.

10.0 Background Information

- 10.1 Audlem Parish Council has approached the Council to transfer the Cheshire Street Playing Fields, Audlem and this is agreed by way of a 99 year lease.
- 10.2 The Council has received a request to enable Audlem Parish Council to continue to use the site as a playing field by members of the public, enhance the use of the current playing fields and protect its future use.
- 10.3 The land is owned freehold by Cheshire East Borough Council and falls within the Green Spaces / Public Open Space portfolio.

- 10.4 The extent of the land to be leased by Audlem Parish Council is shown outlined in red on the attached plan for identification purposes. The client service has confirmed that the land is not surplus to operational requirements. However, they have advised that the proposed will be beneficial as it will provide enhanced football, leisure and recreational opportunities for Audlem and the local community. Therefore, the Client Service supports the lease proposal and deed of dedication.
- 10.5 Audlem Parish 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 and a further protection by entering into a deed of dedication with The National Playing Fields Association operating as Fields in Trust.

11.0 Access to Information

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

Name: Lee Beckett
Designation: Surveyor
Tel No: 01270 686122
Email: lee.beckett@cheshireeast.gov.uk