

Wiltshire Council

Cabinet

27 September 2022

Subject: Service Delegation & Asset Transfer Policy

Cabinet Member: Cllr Phil Alford, Cabinet Member for Housing, Strategic Assets, Asset Transfer

Key Decision: Key

Executive Summary

This report refreshes the existing Service Devolution and Asset Transfer Policy that was approved by Cabinet in October 2017.

The policy enables the transfer of services and assets to Town and Parish Councils, this activity had to be subsequently paused as resources were focused on responding to the pandemic. With a new Business Plan approved, the policy is being refreshed and updated to continue the transfer of assets and devolution of services to local councils.

The report also sets aside one-off investment to ensure any packages can be progressed and delivered in a reasonable timeframe.

Proposals

Cabinet is recommended to:

- 1) Approve the revised Service Devolution and Asset Transfer Policy.
- 2) Approve a drawdown of up to £200K from the transformation earmarked reserve to enable sufficient resource to deliver on requests.

Reason for Proposals

The pandemic paused the SDAT programme and with the new Business Plan there is a drive to refresh the desire to ensure local Councils are best placed to look after the services and assets at a local level.

The revised policy will streamline the protracted negotiations experienced in the previous programme with an aim to make the policy clearer to those Councils wishing to pursue service devolution and asset transfer.

Terence Herbert
Chief Executive

Wiltshire Council

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Purpose of Report

1. This report refreshes the existing Service Devolution and Asset Transfer Policy that was approved by Cabinet in October 2017.
2. The policy enables the devolution and transfer of services and assets to Town and Parish Councils which had to be subsequently paused as resources were focused on responding to the pandemic. With a new Business Plan approved, the policy is being refreshed and updated to continue the process to transfer of assets and devolution of services to local councils where appropriate.
3. The report also sets aside one-off investment to ensure any packages can be progressed and delivered in a reasonable timeframe.

Relevance to the Council's Business Plan

4. The Councils Business Plan 2022-2032 sets out the mission to have vibrant, well-connected communities. Within this mission the business plan sets the aim to make the best use of Council owned assets for the benefit of communities, including transferring those assets to communities where appropriate.

Background

5. The previous policy approved in 2017 continued the Councils approach to devolving services and transferring the associated assets to Town and Parish Councils who are best placed to deal, resource and operate according to local need.
6. The previous programme and policy was based on a package approach and ongoing negotiation to secure a transfer. A programme was initiated that set out tranches for Towns and Parishes to undertake their proposed service devolution and asset transfer, with the original programme for this to be completed by the end of 2021.
7. COVID-19 pandemic in March 2020 effectively paused the programme with the Council going into response and deploying resource on to priority activities that were required during the response phase of the pandemic.

8. With a new Business Plan approved in February 2022, a review of the policy has been undertaken and appended. This will reinstate the planned activity around service devolution and asset transfer.
9. At the Town and Parish council conference held on 27 May 2022, Councils were updated on the planned review of the policy and asked to submit interest in the potential for service devolution and asset transfers.

Main Considerations for the Council

10. The Council previously undertook a programme of service devolution and asset transfer to local communities who are best placed to control, operate and resource those services and assets.
11. COVID-19 pandemic resulted in that programme being put on indefinite pause, with the internal resource being utilised on the response programmes required to support Wiltshire's residents. Communities and businesses. Equally some of the resource was time limited owing to the planned conclusion of the programme by the end of 2021.
12. With the county now in long term recovery from the implications of the pandemic, and with a new business plan approved, the Council is in a position to review the policy and re-establish the activity and discussions with local councils around the potential for future service devolution and asset transfer.
13. The revised policy is appended to this report and on the whole remains largely unchanged from the previous policy.
14. The learning from the previous policy was the drawn-out negotiations and resource intensive process experienced from both organisations undertaking the process. Therefore, the policy aims to streamline this with providing clarity on the proposal and commitment that local Councils must accept when undertaking any proposed agreement.
15. The policy therefore sets out a minimum set of services and/or assets to be devolved and transferred to provide clarity and enable the process and discussions to start. Councils must accept this minimum to enable the agreement to proceed.
16. The Town and Parish Conference held on 27 May set out the likely direction of travel on the review of the policy and the feedback received post the conference has provided a snapshot of those Councils interested in discussing further the potential to reach agreements in the future. This list will be used to follow up with those Councils following the approval of the revised policy.
17. Inevitably resources will be required to progress agreements and negotiations. There is a commitment to ensure the programme is appropriately resourced to give expectations that agreements will be delivered upon, and this report seeks upfront one-off investment to ensure a proportionate level of resource is put in place to enable this to happen.

18. It is envisaged that future agreements will lead to savings for the Council, and any further resource requirements will have to be met from the savings generated from any future agreements.

19. The Council is in active discussions with Trowbridge Town Council on a potential service devolution and future asset transfer and these negotiations will be bound within the revised policy.

Overview and Scrutiny Engagement

20. The Executive responded to a report by the rapid scrutiny exercise group tasked with looking at the service devolution and asset transfer policy. This report went to Overview & Scrutiny Management Committee on 14 July 2022.

21. All 13 recommendations were responded to, and the Executive accepted or amended all recommendations put forward, with this report providing further detail to those responses, particularly with response to the concerns around the commitment by the executive to resource the programme going forward.

22. The Overview & Scrutiny Management Committee further resolved to ask the Asset Transfer Policy Rapid Scrutiny Group to review and comment on the new Asset Transfer Policy prior to its consideration by Cabinet.

Safeguarding Implications

23. No direct safeguarding implications arising from this report.

Public Health Implications

24. The policy should enable those assets and services that support communities and residents physical and mental wellbeing to continue and where possible be enhanced.

Procurement Implications

25. None identified.

Equalities Impact of the Proposal

26. Equality Impact assessments will be undertaken as part of the individual agreements and process.

Risks that may arise if the proposed decision and related work is not taken

27. The risk is that future possible service devolutions and asset transfers would either not proceed or would proceed in a haphazard, uncontrolled way or would continue to be subject to lengthy delaying negotiations.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

28. The resources of the programme will need to be monitored and managed, and if appropriate increased to ensure successful agreements in a timely manner. The amendments to the policy make it more prescriptive which could dissuade Councils to put forward proposals going forward.

Financial Implications

29. The programme will, on the whole, be resourced from within existing resources within services. The allocation of one-off funding will be used to support those services e.g. legal, where additional resource is required upfront to ensure successful completion of future agreements.

30. It is envisaged that savings will materialise from future agreements, and these will either be factored into the Councils Medium Term Financial Strategy or be used to fund any further additional resource required to deliver on the programme.

Legal Implications

31. Section 123 of the Local Government Act 1972 (“the LGA 1972”) imposes a general restriction on disposals by local authorities which means that Wiltshire Council cannot dispose of its land for a consideration less than the best that can be reasonably obtained in the market, except with the express consent of the Secretary of State. Disposals by way of short-term tenancies are not caught by this restriction.

32. The power of the Secretary of State to give a general consent for the purpose of land disposals by local authorities is set out in section 128 (1) of the LGA 1972. Specific consent is not required for the disposal of any interest in land at less than best consideration where the authority considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental wellbeing of its area. However, disposal at less than best consideration is always subject to the condition that the undervalue does not exceed £2 million. Therefore, all proposed transactions where the aggregate of “undervalue” exceeds the £2 million threshold will require the specific consent of the Secretary of State. These statutory restrictions will need to be considered when agreeing the assets to be transferred to the Town/Parish Council.

33. The model community asset transfer and leasehold documentation is drafted on the basis that the use of the property will continue for the benefit of the local community.

Open Space Land

34. A local authority has a statutory duty to advertise its intention to dispose of open space land in a local newspaper for two consecutive weeks and to consider objections. This will need to be done before any final decision is taken on the disposal so that proper consideration is given to the responses that are received. This process will need to be factored into the programme of asset disposals to the Town and Parish Councils.

Subsidy Control

35. Subsidy Control is intended to avoid any state aided subsidies which could distort competition and affect trade between members states. Subsidy Control law can

potentially apply to town and parish councils and third sector organisations when they receive community assets and/or financial contributions from Wiltshire Council towards the cost of delivering delegated services. Subsidy Control can only be found in the situation where the organisation receiving the aid acts on a market. Local Authorities (as well as charities) can in some of their functions be assessed as acting on a market. This assessment is unlikely to be made where the recipient is engaged in carrying out not for profit activities to meet local community need. However, the use of each individual asset or financial contribution must be considered, and Legal Services must be engaged to advise Wiltshire Council on the subsidy control implications for the transfer package.

36. If subsidy control has been granted without approval (either through a separate notification or by following the terms of the relevant exemption) this would be an illegal subsidy. The government has the ability to make such orders to correct the perceived market distortion caused by the illegal aid. This could take the form of an order to the recipient to return to Wiltshire Council any assets and/or repay the value of any financial aid, plus interest from the date of the aid to the date of repayment.
37. Even where there is no illegal subsidy in favour of the recipient, care needs to be taken to avoid accidental leakage of aid in the future when the recipient itself deals with the asset or funding. For instance, care needs to be taken by the recipient to avoid giving a third party a competitive advantage by letting a community asset at below market rate, and a legally compliant procurement process must be followed by the recipient when engaging any third party to carry out delegated services. There are clauses in the model legal documentation between Wiltshire Council and the recipient to deal with this.

Workforce Implications

38. There are no direct workforce implications arising from the report, additional resources required will be assessed by the relevant service.

Options Considered

39. The Cabinet have three options available, either cease the process entirely, to approve the revised policy or to retain the existing policy.

Conclusions

40. To re-establish the activity of service devolution and assets transfer the Cabinet is recommended to:
 - a. Approve the revised Service Devolution and Asset Transfer Policy.
 - b. Drawdown of up to £200K from the transformation earmarked reserve to enable sufficient resource to deliver on requests.

Andy Brown (Corporate Director Resources & Deputy Chief Executive)

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Appendices

Appendix 1 – revised Service Devolution and Asset Transfer Policy

Background Papers

None