

Property and Asset Transfer to Salisbury City Council

Purpose of the Report

1. To obtain final Cabinet approval regarding the package of properties and assets that will transfer to Salisbury City Council, the covenants that will apply to these and to seek approval to approach the Government Office in order to obtain the required consent from the Secretary of State for this transfer.

Background

2. As part of creating Salisbury City Council the Implementation Executive considered a package of properties and other assets that would be transferred to Salisbury City Council subject to further conversations between the Leaders of the two Council's after the June elections and further work by officers to confirm the details of land and asset ownership.
3. The proposed transfer of assets to the City Council falls under the requirements of the Local Government Act 1972: General Disposal Consent (England) 2003, and as such final approval of the recommended package rests with the Secretary of State as the transfer being made by Wiltshire Council is at less than the market value of the assets.
4. Some areas of land that transferred to Wiltshire Council on 1st April 2009 from Salisbury District Council were subject to various trust documents. Where relevant, officers of Wiltshire Council are continuing to work to bring the required annual returns in relation to these Trusts up to date in order that they may be transferred to Salisbury City Council, although the agreement of the Charity Commission will be required.
5. At this time, in relation to the proposed transfer of property and assets, pending Cabinet approval and that of the Secretary of State, Legal Officers have completed the required work to establish where title is vested in Wiltshire Council and prepared the necessary documentation to allow consideration of the package by Salisbury City Council, this includes the development of appropriate covenants in relation to the land and assets as approved by the Implementation Executive.
6. At this time, Salisbury City Council has not appointed legal advisors and so we have not been able to discuss the wording of the covenants with them, but if we are to proceed with seeking approval of the package from the Secretary of State it is necessary for the wording of the covenants to be finalised and the value of the assets assessed in relation to them.

7. Should Cabinet approve the proposals within this report, a series of Question and Answers regarding this matter will be produced by property and legal officers.

Main Considerations for the Council

8. The purpose of the proposed transfer of assets to Salisbury City Council is three fold.
 - i. Some properties (shown as investment estate on Appendix A) are proposed for transfer to provide longer term investment income for the City Council.
 - ii. Some assets (shown as operational estate on Appendix A), such as the Guildhall and the Crematorium are proposed for transfer as they are essential to the operation of service responsibilities that have been transferred from Wiltshire Council to Salisbury City Council and the wider administration of the City Council.
 - iii. Some assets (shown as public open space on Appendix A) are proposed for transfer on the basis that they are key areas of public open space within the City and are maintained by staff who have transferred to the City Council.
9. In relation to two specific areas, the proposed transfer requires there to be operational leases granted to Wiltshire Council by Salisbury City Council. The first area is the Guildhall, where there will need to be an operational lease in favour of the Tourist Information Centre, the main terms of which are attached as Appendix C. This lease allows for the agreed re-provision of suitable alternative accommodation by Salisbury City Council or the termination of the arrangement by Wiltshire Council. The second area relates to the bungalow at the Crematorium, where an operational lease of 125 years (or until such use ceases, whichever the earlier) will need to be granted to Wiltshire Council in recognition of the continuing use of the site by Care Connect. The main terms are attached as Appendix D.
10. The Old Swimming Pool site is now proposed for transfer to Salisbury City Council. This site was identified by Salisbury District Council as part of the Bourne Hill funding package. Therefore, in order to maintain the broad financial balance of the package previously identified by the Implementation Executive for the funding of Bourne Hill, the investment property at 47 Blue Boar Row is no longer proposed for transfer to Salisbury City Council.
11. All of the assets proposed for transfer are currently vested in Wiltshire Council and as such officers from across the Council have been involved in identifying the potential loss of opportunity for service delivery represented by the proposed transfers. As can be seen from Appendix A, in respect of both Highways and Education Services the proposed transfers could negatively impact on future service development in some specific locations.
12. As such, it is proposed that some of the assets transferring are subject to covenants that cover five specific circumstances:-

- i. In relation to public open space, a broad covenant ensuring that the site will continue to be managed and developed for community benefit.
- ii. Where the Service Director – Sustainable Transport has identified that additional work on either the pathway or expansion of the cycle path is likely to occur. This applies Queen Elizabeth Gardens only.
- iii. Where the Service Director Planning and Development has identified that there is a reasonable likelihood of future bus lane or cycle path creation or improvement. This applies to Churchill Gardens only.
- iv. Where an area of land adjoins an educational site and the Head of School Buildings and Planning has confirmed that the current occupancy of the school, or likely future expansion, means that it currently has a site size capacity that is below the recommended minimum level set by Government. This applies to Exeter House Special School and Wyndham Park Primary School. This is a significantly lower number of sites than was identified in previous papers to the Implementation Executive.
- v. Where the Service Director – Economy and Enterprise has identified that the asset would be essential to the successful implementation of the Vision for Salisbury. This applies to 54 Fisherton Street, Land at Malthouse Lane, The Maltings Open Space and Churchfields Open Space.

13. The wording of each covenant is different, and is contained in Appendix B. However, a summary of the implications of the covenants is as follows:-

- i. In relation to areas covered by the community benefit covenant, should Salisbury City Council decide to dispose of the asset or seek to change its primary use from that of public open space, Wiltshire Council will have the right to purchase the asset for £1 if it is able to identify an alternative community or statutory use for the benefit of the citizens of Salisbury. This covenant can only be activated if Salisbury City Council decides to change the primary use of the area away from that of community use, Wiltshire Council will not be in a position to active this covenant under any other circumstance.
- ii. The Path or Cycle Way covenant applies to the widening of the existing cyclepath through the property and to a strip of land 2m wide along the highway adjoining Queen Elizabeth Gardens. It allows Wiltshire Council to purchase this strip of land for £1, but only if this is necessary to either enhance the public footpath or construct a cyclepath.
- iii. The Highways covenant this applies to a strip of land up to 10 metres wide in Churchill Gardens and New Bridge Road running parallel to the Southampton Road and allows Wiltshire Council to purchase this

area of land for £1 provided that it is required for the creation of a fully funded bus lane or cycle path that has secured full planning approval.

- iv. The Education Site covenant applies to a part of Bishopdown Public Open Space and allows Wiltshire Council to purchase the identified areas of land for £1 in the event that they are required to ensure that the neighbouring schools meet minimum government guidelines on site size.
- v. In relation to the areas covered by the Vision for Salisbury covenant, this covenant allows Wiltshire Council to purchase the identified areas of land and property for £1 in the event they are required for an approved development linked directly to the Salisbury Vision or similar multi-agency project.

14. Appendix A also details other properties and areas of land that were originally proposed by Salisbury District Council for transfer to the City Council and so formed part of various reports to the Implementation Executive. The proposed position in relation to these is as follows:-

- i. The public open space land adjoining St Pauls school should transfer with the community benefit covenant but without the education covenant provided that Salisbury City Council grants the school the right to use the adjoining recreational space for sports and other recreational purposes.
- ii. Some areas, including Lower Bemerton Recreation Ground, Harnham Recreation Ground, Hudson's Field, and Victoria Park are covered by Deeds of Trust and subsequently cannot simply be transferred by Wiltshire Council as there are significant additional steps that need to be undertaken. However, subject to the completion of the required statutory returns and the agreement of the Charity Commission it is proposed that the Trusteeship for these areas is transferred to Salisbury City Council. In the meantime it is essential that the Council enters into a Management Agreement with Salisbury City Council for the maintenance of these properties so each party is aware of its responsibilities and liabilities, particularly in respect of health and Safety. A Management Agreement has already been passed to Salisbury City Council for action in this regard.
- iii. Representatives of the City Council have requested that Brown Street Gym is transferred to them and it is proposed to do so without any covenants in line with the approach identified for other investment estate.
- iv. Officers do not believe that the churchyards identified on Appendix A are owned by Wiltshire Council. As such Wiltshire Council cannot transfer these to the ownership of Salisbury City Council. Although Salisbury City Council has accepted responsibility for the maintenance of these, they will remain owned by the Diocese or there current owner. Should further enquiries confirm that any are owned

by Wiltshire Council then it is proposed they will transfer to the City Council on the basis that they are only of nominal financial value.

- v. In relation to 22 Bedwyn Street, a property identified within the Bourne Hill funding package, it is proposed to grant Salisbury City Council a two year tenancy at a peppercorn rental so that they can utilise the accommodation prior to the refurbishment of the Guildhall being completed.

15. Taking into account the wording of the covenants contained in Annex B, the current valuation, by independent valuers Humberts, of the properties and assets proposed for transfer is £3.6 million. The proposed consideration that will be received by Wiltshire Council for these assets is £1, which is significantly below their full market value. Consequently, under the terms of the Local Government Act 1972: General Disposal Consent (England) 2003 Wiltshire Council will need to seek approval from the Secretary of State for the proposed transfer of assets for less than market value.
16. A significant number of the community properties are classified as open space within the terms of Section 336(1) of Town and Country Planning Act 1990. This defines open space as: "open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.
17. Accordingly, under section 123 (2A) of Local Government Act 1972 the proposed freehold transfer of these properties will have to be advertised for two consecutive weeks in the Salisbury Journal once approval from the Secretary of State has been received. Officers will report back to Cabinet if any objections are received.

Environmental Impact of the Proposal

6. No specific recommendations or implications.

Financial Implications

7. This package remains within the overall broad assessment undertaken by the finance team of Wiltshire Council at the time the precept was set for Salisbury City Council. It proposes the transfer of capital assets with a value of approximately £3.6m to Salisbury City Council for the sum of £1 pound and will reduce the over all capital asset base of Wiltshire Council by the above sum. As public bodies are required to obtain full value from their resources and this sum is above the discretion provided to Councils by the Local Government Act 1972: General Disposal Consent (England) 2003 the approval of the Secretary of State for Communities and Local Government will be needed, which will provide for an additional assessment of the financial implications of the proposals.
8. The land and asset values used are those that apply with the proposed covenants in place, should these not be approved by members, then the package will need to be reviewed and re-valued in the light of this which will cause the

value of the package to increase substantially and increase the operational risk to Wiltshire Council in the areas identified elsewhere in the report.

Legal Implications

9. Subject to the Secretary of State for Communities and Local Government agreement, this report will lead to the assets identified within Appendix A as “To be Transferred to Salisbury City Council” to be transferred subject to the agreement of the City Council to the over all package and completion of relevant legal process, including the application of the covenants identified within Appendix A.
10. For those assets identified in Appendix A as being held in trust and proposed for transfer to Salisbury City Council, officers will undertake the necessary work, including seeking the approval of the Charity Commission, to transfer the Trusteeship to Salisbury City Council subject to the agreement of that Council of the over all package.
11. A significant number of the community properties fall within the definition of open spaces under Section 336(1) of Town and Country Planning Act 1990. The proposed transfer will therefore have to be advertised and any objections will be reported back to Cabinet at a later date.
12. This report and the decision(s) of Cabinet in relation to it will form part of the submission to the Secretary of State.

Reasons for the Proposals

13. To finalise the over all package of assets (Land and property) to be transferred to Salisbury City Council by Wiltshire Council, whether this is by ownership or the transferring of Trusteeship.
14. To confirm the covenants and any operational licences that will apply to the transferring assets
15. The above are essential requirements of the application that needs to be made to the Secretary of State for Communities and Local Government to obtain consent to the proposed transfer of assets for less than full market value.

Proposals

16. I recommend that:

- (i) the Cabinet Approves the transfer of the package of assets and trusteeships identified as transferring to Salisbury City Council on Appendix A, subject to the approval of the Secretary of State for Communities and Local Government, the agreement to the package as a whole by Salisbury City Council and the completion of due legal process;

- (ii) in doing so, the Cabinet approve the application of the covenants identified in Appendix A and contained in full in Appendix B and the operational leases noted within this report and contained in Appendix C and D.

KEITH ROBINSON

Chief Executive

No unpublished documents have been relied upon in the preparation of this Report

APPENDIX B

COVENANT WORDING

1. Community Use Covenant

The Transferee Authority shall not dispose, except by way of a lease for a term of up to 7 years, of any of the land forming part of the Property which is at the date hereof used for community purposes (as defined in the Third Schedule) nor carry out or permit to be carried out upon the said Property any development (as defined in the Town and Country Planning Act 1990) without the prior consent in writing of the Transferor Authority which such consent shall not be unreasonably withheld or delayed in the case of any disposals or development (for the avoidance of doubt a disposal shall include the granting of any rights or easements over the said Property for the benefit of any land adjacent to or neighbouring the relevant part of the Property except for any such in favour of any statutory undertaker in respect of the provision of services to the relevant part of the Property)

The Transferee Authority will not effect any disposal of the whole or any part of the Property no longer used for Community Purposes without the consent of the Transferor Authority which shall not be withheld or delayed and in such an event the Transferee Authority will offer the Transferor Authority the right to acquire the land subject of the disposal for the sum of £1.00 (one pound) in the event that the Transferor Authority wishes to use the Property for its statutory purposes or other uses that will benefit the local community and/or the citizens of Salisbury, including but not limited to Affordable Housing, Educational, Recreational, or Welfare purposes.

“Community Use” shall mean the Property being used for the benefit of the community which use shall include parks, play grounds, open spaces, country parks, woodlands, allotments, community halls, sports pitches/fields/facilities/changing rooms, including car parking, toilets and refreshment facilities for all of the afore mentioned uses so long as these are ancillary and serve the dominant community use, or such other use as mutually agreed in writing between the Transferor Authority and the Transferee Authority.

2. Exeter House Educational Covenant

The Transferor Authority shall have the right to acquire the Property in the sum of £1 in the event that the Transferor Authority requires some or all of it to facilitate or to construct an extension to Exeter House Special School.

3. Wyndham Park Educational Covenant

The Transferor Authority shall have the right to acquire in the sum of £1 up to 0.65 acres of the Property adjoining Wyndham Park and St. Mark's Primary Schools such area to be reasonably agreed between the parties in the event that it is needed by the Transferor Authority for the expansion of either/both schools or to comply with Government site size guidelines prevalent at the time.

4. Queen Elizabeth Gardens Cycle Path Covenant

The Transferor Authority shall have the right to acquire in the sum of £1 a strip up to 2m wide of the Property running alongside the public highway for the purposes of enhancing the footpath or constructing a cycleway, and to widen to 3m the existing 1.8m wide Town Path that passes through the Property.

5. Churchill Gardens Highways Covenant for Bus or Cycle Lane

The Transferor Authority shall have the right to acquire in the sum of £1 a strip up to 10m wide of the Property running alongside the public highway for the purposes of constructing a bus lane and/or cycleway on condition that funding is in place and any planning or other statutory consents have been secured.

6. New Bridge Road Highways Covenant for Bus or Cycle Lane

The Transferor Authority shall have the right to acquire in the sum of £1 a strip up to 10m wide of the Property running alongside the public highway for the purposes of constructing a bus lane and/or cycleway on condition that funding is in place and any planning or other statutory consents have been secured.

7. Churchfields Public Open Space Salisbury Vision Covenant

The Transferor Authority shall have the right to acquire the Property in the sum of £1 to facilitate the future development of The Estate in the event that it is required for an approved development directly linked to the Salisbury Vision or similar multi-agency project.

8. The Maltings Salisbury Vision Covenant

The Transferor Authority shall have the right to acquire the Property in the sum of £1 to facilitate the future development of The Estate in the event that it is required for an approved development directly linked to the Salisbury Vision or similar multi-agency project.

APPENDIX C

MAIN TERMS OF GUILDHALL OCCUPATIONAL LEASE

1. Demise

The premises comprise part of the Property known as the Guildhall, Market Square, Salisbury as shown on the attached floor plan, together with access rights thereto, the use of current services and utilities together with the right to provide replacement services in particular Information and communication cables, equipment and similar technology, subject to making good any damage to the Landlord's reasonable satisfaction.

2. Landlord

The Landlord is Salisbury City Council.

3. Tenant

The Tenant is Wiltshire Council.

4. Term

The lease is for a term of 125 years or earlier if:

- a. The Tourist Information Centre (or any other organisation delivering substantially similar services) permanently vacate the building (other than in the case of an insured risk) and
- b. The Council has no other use for the premises in the delivery of its statutory services.
- c. The landlord, relocates, and meets the full costs, the tenant to alternative premises on the same terms and conditions of equivalent size condition and facilities within the Salisbury City Council boundary that meet the reasonable requirements of the tenant.

5. Rent

The rent is to amount to £1pa exclusive if demanded.

6. Property costs

The tenant is to be responsible for the Landlord's costs in relation to all outgoing for the Guildhall including but not limited to: Non-domestic rates, water rates, power, heat, lighting, buildings insurance, repairs. This will be levied through a Service charge on a floor area pro-rata basis. For the avoidance of doubt, the Tenant will not be liable for any refurbishment costs.

7. Repairs

The tenant is responsible for keeping and yielding up the internal parts of the premises in a good state of repair, but will not be obliged to return the premises in any better (but not any worse) state of repair as witnessed by the schedule of condition.

8. Alterations

The tenant may undertake any alterations subject to obtaining all necessary statutory consents, and subject to the Landlord's consent that shall not be unreasonably withheld or delayed.

9. Alienation

The lease is personal to Wiltshire Council and there will be an absolute prohibition against assignment or sub-letting, other than to another organisation that delivers substantially similar services.

10. Security of tenure

The security of tenure and compensation provisions of the Landlord and Tenant Acts will be expressly excluded.

11. Insurance

The tenant is to insure the contents but not the building against all standard risks.

12. Indemnity

The tenant will indemnify the landlord against any costs, claims, actions or demands arising from the grant of the lease and/or occupation of the premises.

13. Costs

Both parties are to be responsible for their own legal and other costs incurred in the grant of the lease.

APPENDIX D

MAIN TERMS OF CREMATORIUM LODGE OCCUPATIONAL LEASE

1. Demise

The premises comprise all that property and boundaries known as the Crematorium Lodge House, London Road Salisbury, as shown edged red on the attached plan, vehicular and pedestrian rights over the road shown brown on the plan, pedestrian and maintenance access rights over the green hatched land, rights to park up to two cars over the yellow land, together with the provision of utilities and drainage.

2. Landlord's reserved rights:

- a. To use the outbuilding as a refreshment facility for its grounds maintenance staff subject to the landlord being responsible for all repairs, maintenance, insurance, non-domestic rates and other property running costs.
- b. To place one mobile waste bin within the garden of the demise

3. Landlord

The Landlord is Salisbury City Council.

4. Tenant

The Tenant is Wiltshire Council.

5. Term

The lease is for a term of 125 years or earlier if:

- c. Care Connect (or any other organisation delivering substantially similar services) permanently vacate the building (other than in the case of an insured risk) and
- d. The Council has no other use for the premises in the delivery of its statutory services.
- e. The landlord relocates and meets the full costs, the tenant to alternative premises on the same terms and conditions of equivalent size condition and facilities within the Salisbury City Council boundary that meet the reasonable requirements of the tenant.

6. Rent

The rent is to amount to £1pa exclusive if demanded.

7. Property costs

The tenant is to be responsible for all outgoing in relation to the property including but not limited to: Non-domestic rates, water rates, power, heat, lighting, buildings and contents insurance, etc

8. Repairs

The tenant is responsible for keeping and yielding up the premises in a good state of repair, but will not be obliged to return the premises in any better (but not any worse) state of repair as witnessed by the schedule of condition.

9. Alterations

The tenant may undertake any alterations, extensions, and additions (including the erection of pratten type buildings within the demise or immediately on the adjoining land of the landlord), subject to obtaining all necessary statutory consents, and subject to the Landlord's consent that shall not be unreasonably withheld or delayed.

10. Alienation

The lease is personal to Wiltshire Council and there will be an absolute prohibition against assignment or sub-letting, other than to another organisation that delivers substantially similar services.

11. Security of tenure

The security of tenure and compensation provisions of the Landlord and Tenant Acts will be expressly excluded.

12. Insurance

The tenant is to insure the building against all standard risks.

13. Indemnity

The tenant will indemnify the landlord against any costs, claims, actions or demands arising from the grant of the lease and/or occupation of the premises.

14. Costs

Both parties are to be responsible for their own legal and other costs incurred in the grant of the lease.