

27 November 2018

Subject: Service Devolution and Asset Transfer Policy – Small scale service based asset freehold transfers

Cabinet Member: Cllr Richard Clewer, Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism

Key Decision: Key

Executive Summary

To seek authority to dispose of the freehold of service based assets to small Town and Parish Councils complementing the Service Devolution and Asset Transfer Policy

This report seeks an endorsement of dealing with small scale requests subject to specific criteria being followed, as set out in the report.

Proposal

Cabinet is recommended to:

1. Approve the freehold and long leasehold disposal of the service based assets identified to smaller Town and Parish Councils, subject to the criteria being met in each instance.
2. Authorise the Head of Strategic Assets and Facilities Management to dispose of freehold or long leasehold interest of the assets.

Reason for Proposal

Following the approval of the Service Devolution and Asset Transfer Policy a programme for packages of transfers is being established. The Council is receiving a number of small scale requests from, predominantly, Parish Councils and the approach set out in this report will allow the Council to deal with those small scale requests in conjunction with the programme established under the Service Devolution and Asset Transfer Policy in a timely and effective manner.

Alistair Cunningham, Corporate Director

Wiltshire Council

Cabinet

27 November 2018

Subject: Service Devolution and Asset Transfer Policy – Small scale service based asset freehold transfers

Cabinet Member: Cllr Richard Clewer, Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism

Key Decision: Key

Purpose of Report

1. The purpose of this report is to declare that freehold interest of the service based assets can be transferred by the Council to small Town or Parish Council's subject to the criteria in paragraph 12 being met.

Vision

2. Wiltshire Council is committed to continuing to improve and enhance the outcomes of people's lives and businesses in Wiltshire working closely with its communities and partners. The council's business plan 2017 – 2027 emphasises the desire for communities and residents in Wiltshire to continue to feel they can take responsibility for their well-being, have positive relationships with each other to get involved and influence and shape their own communities
3. This approved policy supports this commitment encouraging local town and parish councils to take responsibility for their well-being, build positive relationships and get involved, to influence and act on what's best for their own communities. It sets out a framework to enable the devolvement of those services and assets best placed to be delivered by local communities at the Town and Parish Council level.
4. The council recognises that the devolution of assets and services to local communities, town and parish councils makes a significant contribution towards enabling them to be stronger, more resilient and sustainable. Experience gained from a number of asset and service transfers completed to date, has shown that the development of the policy presented significant opportunities to create stronger, more cohesive and sustainable communities. It enhances the role of town and parish councils; enables the use of service based assets to be enhanced with the ability to modify them to embrace local needs; the ability to source and secure additional resources from sources not available to Wiltshire Council to do so as well as the ability to deliver and modify services to match the needs and expectations of local

communities.

5. The approach set out in this report complements the Service Devolution and Community Asset Transfer Policy (“the Approved Policy”) and in particular meets the community wellbeing (localisation) goal within the Business Plan.

Background

6. The Approved Policy requires a structured programme to be developed to implement the transfer of services and service based assets to Town and Parish Councils. This may have a particular emphasis on the larger towns in the county initially meaning that the Parishes and smaller towns may have to wait for some time before packages are established.
7. A number of the smaller Town and Parish Councils have limited appetite to take on a number of services, but do wish to be in greater control of the locally provided facilities. As such, there will not be a package of services and instead relatively small scale requests to take on service based assets.
8. This report seeks approval to dispose of service based assets to town and parish councils, subject some qualifying criteria being met, as set out in paragraph 12.
9. This report also seeks to exclude the towns listed in the structured programme, as set out in paragraph 6 and listed in Appendix 1, from service based transfers and the purpose of this report.

Main Considerations for the Council

10. The Approved Policy sets out that all package transfers need to be returned to Cabinet for approval which is unnecessarily resource and governance heavy for the smaller scale requests. This report sets out a straightforward governance approach to smaller scale requests and establishes a clear framework for control of such requests.
11. The Approved Policy sets out the types of assets that are **not** normally be considered for transfer, whereas in this report we are explicit about the properties that we will consider for small towns and parishes. The list of assets includes:
 - Band 4 Car parks – as defined in 2011 parking review, as set out in the Wiltshire Local Transport Plan 2011-2026
 - Non-strategic car parks – as defined in 2015 Parking Review (provided by reclassified in more recent Cabinet paper)
 - Public conveniences – except where part of a wider holding (see paragraph 12)
 - Play areas
 - Cemeteries
 - Allotments
 - Recreation fields in small parishes only
12. Whilst the list includes specific asset based services, requests for other services or service assets will not be excluded; these will be considered on a parish by parish basis.

13. Where the service based asset is either within or adjacent to a wider holding of Wiltshire Council a 125 year lease will be considered. The lease will be on full repairing and insuring terms with a restricted user clause (community use as defined in the approved policy) but with break clauses for redevelopment or disposal purposes.
14. To manage the number of enquiries and resource implication of this report the following criteria will apply:
 - Only land that is held freehold by Wiltshire Council will be considered (land held in trust by the Council will not be considered),
 - Only Parish Councils will be considered in this approach,
 - If existing agreements are in place, this would be enlarged to either a freehold or 125 year lease,
 - No more than 10 service based assets will transfer to a Parish Council,
 - The freehold transfer will be subject to a standard transfer agreement, containing the same terms as the Approved Policy, in particular in respect of community use and overage provision,
 - The recipient is not a Council listed in Appendix 1.
15. To create efficiencies, transfers to the Parishes Council will included all transferrable assets within the Parish boundary, removing the need to repeat the same process more than once.
16. An estimate of the scale of transactions because of this approach is estimated at circa 100 service based assets, although the actual number of small towns & parishes involved will be significantly less.

Open Space Land

17. 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 should be done before any final decision is taken on the individual disposal, so that proper consideration is given to the responses that are received. Should a notice be required the cost of the notice will be borne by the respective Parish Council.

Funding of delegated services

18. Wiltshire Council will offer no staged payments to town and parish councils on the transfer of the assets, with the recipients being responsible for ensuring that revenue budget is available to fund the services. On a service specific basis there may be on/off funding, such as s106 funds, which will be transferred as a consequence of the freehold disposal.

Resources

19. The resources required to deliver a structured programme of Service Devolution and Asset Transfers has yet to be assessed. An assessment of the resources within Legal Services required to deliver these smaller scale transfers will need to be made, they cannot be met within existing resources whilst delivering the corporate objectives of the Council.

20. Throughout the process officers will keep Elected Members informed, by advising that discussions are being held with their respective Parish Council or informing the Cabinet Member that transactions have completed.

Overview and Scrutiny Engagement

21. A rapid scrutiny exercise was held in November 2017 to consider the draft Service Devolution and Asset Transfers Policy, with its findings and recommendations reported to Cabinet. The Chairman and Vice-chairman of Overview and Scrutiny Management Committee received a briefing on the further proposals presented in this report.

Safeguarding Implications

22. None

Public Health Implications

23. None

Procurement Implications

24. None

Equalities Impact of the Proposal

25. None

Environmental and Climate Change Considerations

26. None

Risks that may arise if the proposed decision and related work is taken

27. When considering the transfer of assets and land the council will need to consider the effects on other strategic plans, hence the suggestion that assets in or adjacent to wider holdings are dealt with by way of long lease on the terms set out in paragraph 12 of this Report.
28. There may be inequality, or perception of inequality, and transparency across Wiltshire with varying levels of service being delivered and in some areas local precepts being increased to pay for the additional services in those areas where others have not been increased.

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

29. Whilst there is a clear intention in favour of transfer of assets to provide local community services in appropriate cases, the Council should consider its statutory and financial obligations as part of any such arrangements.
30. Staffing capacity will need to be considered as additional time will be incurred to negotiate and complete temporary agreements whilst the wider Service Devolution package for any particular parish is being negotiated.

31. Parish Councils may become frustrated with the potential delay should the Council negotiate with the town councils first, especially where the parish only has a handful of service based assets they wish to take control of.
32. The purpose of this approach is to create efficiencies for resources, a simplification of the process to transfer service based assets to small town and parish councils and to support and enhance the existing mix of authorities for some service based assets (at the date of this report play areas can only be given to town and parish councils by way of short term lease).

Financial Implications

33. The value of the individual assets being promoted for transfer is predominantly *de minimis* in accounting terms, i.e. all very low value, and therefore there not considered to have any implications under s123 of Local Government Act 1972.
34. The proposals brought forward under this policy are generated as a consequence of reduced level of expenditure available to the Council due to budget savings within the Council's overall financial strategy. The purpose of the transfers, in part, is to enable services to transfer potential revenue burdens to Parish Councils and mitigate any potential budgetary overspend.
35. Whilst it is difficult to determine the individual service savings from each individual small scale transfer, the objective of the approach is to avoid future costs for Wiltshire Council (for example cost of renewing existing lease) and mitigation of future liabilities; should Parishes hold a lease but wish to return the asset to Wiltshire Council.
36. The freehold transferred of an asset to a parish council, will include any financial liabilities or obligations, this includes any grant agreement for funding.
37. In the case of any grant agreements for funding, Legal Services will need to ensure that the original purpose of the funding is continued by the town or parish council with an obligation contained in the legal documentation. In addition, Legal Services will need to ensure that the disposal does not trigger any clawback of the fund (or a proportion of the fund) from the grantor. The position will need to be considered by Legal Services on a case by case basis.

Legal Implications

38. The ownership is unclear on much of the land that is maintained by Wiltshire Council leading to the potential of legal complexities that need to be addressed before the freehold can be transferred.
39. The governance approach in this report draws comparisons to the existing disposal process in place at present, where sites are declared available for sale at the outset and the decision to dispose is delegated to officers. The purpose of this report is to set the parameters of all small scale transfers to ensure that all delegated decisions fit within those parameters.

Section 123 Local Government Act 1972

40. 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. The power for 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 that the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.
41. The model community asset freehold and leasehold documentation is drafted on the basis that the use of the property will continue for the benefit of the local community.
42. 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.
43. The proposal set out in this report are for sites of a predominantly *de minimis* and the aggregate value to each parish council will not exceed £2m. The objective of the business plan is to enable local communities to deliver local services, thus creating social and environmental well-being for their particular area.

Options Considered

44. Continue with the approach of negotiating and agreeing short term agreements, although the risk of this has been set out in paragraph 26.

Conclusions

38. This paper proposes a complementary approach to service devolution and asset transfers associated with small towns and parishes, to be implemented in tangent with the wider programme for larger towns.
39. The implications of implementing these changes are necessary to provide the most beneficial outcome for both the Council, small town and Parish Councils, and local Communities.

Proposal

40. Approve the freehold and long leasehold disposal of the service based assets identified to Town and Parish Councils, subject to the criteria being met in each instance.
41. Authorise the Head of Strategic Assets and Facilities Management to dispose of freehold or long leasehold interest of the assets.

Alan Richell, Growth & Investment Programme Director

Report Authors:

Mike Dawson, Strategic Asset Manager - mike.dawson@wiltshire.gov.uk

Appendices

Appendix 1 – List of larger towns being included in the wider programme and, therefore, excluded from this paper.

Background Papers

Service Devolution and Asset Transfer Policy – approved at Cabinet on 7th November 2017

Appendix 1

Town Councils being considered as part of the wider programme and excluded from this paper:

Devizes
Chippenham
Mere
Calne
Amesbury
Trowbridge
Tisbury
Melksham
Wilton
Corsham
Tidworth
Marlborough
Cricklade
Westbury
Royal Wotton Bassett
Warminster
Pewsey
Bradford on Avon
Malmesbury