

Appendices

Annex 1 – 6 and
indicative plans of
land



CABINET REPORT

Report Title	Community Asset Transfers – Open Space and Community Centres, Parish Councils
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AGENDA STATUS:

Public

Cabinet Meeting Date:	20 th May 2020
Key Decision:	Yes
Within Policy:	Yes
Policy Document:	No
Service Area:	Regeneration and Enterprise
Accountable Cabinet Member:	Cllr Tim Hadland, Member for Regeneration and Enterprise
Ward(s)	New Duston Ward, Old Duston Ward, East Hunsbury Ward, Nene Valley Ward, Billing Ward

1. Purpose

- 1.1 This report recommends the Community Asset Transfer (CAT) of the community property and land set out in annex 1 - 5 of this report to the respective Parish Councils. It outlines the process of due diligence undertaken to date and proposes the terms to take the sites forward through to completion.

2. Recommendations

It is recommended that:

- 2.1 Cabinet delegates authority to the Economic Growth and Regeneration Manager, in consultation with the Borough Secretary, Chief Finance Officer and Cabinet Member for Regeneration and Enterprise to complete the transfers of Public Open Spaces and Community Centres to the Parish Councils on the following terms:-

- That there is a restrictive covenant placed on the land and centres to ensure that they continue to be used as intended for community use.
- That the Council will continue to provide grass cutting services where there are existing contracts until June 2028 but thereafter the Parish Council will assume this responsibility.
- The Parish Councils will take on all other responsibilities for the land and centres at completion of the community asset transfer.
- The Council to retain a right of pre-emption should the Parish Council no longer require the land or centres for permitted use.
- There will be an independent valuation process undertaken by a RICS qualified valuer to determine market price completed for all assets to be transferred.
- The independent market valuation will consider the financial benefit of the grass cutting contract, the management and maintenance costs, the restrictive covenant, and where relevant, the council tax charges collected on behalf of the Parishes for services provided in the Parish Council areas. A net market value will be determined, and the transfer price will be agreed considering any value for money savings that will be achieved by the transfer.
- Each party will bear their own professional fees including legal and estates costs.
- The transfer will be subject to advertisement to adhere to statutory requirements to allow members of the public opportunity to comment. These comments will be reviewed by the Economic Growth and Regeneration Manager, in consultation with the Borough Secretary, and the Cabinet Member for Regeneration and Enterprise and should there be no objections to the proposed disposal the matter will complete. If there are any objections received to the proposed disposal then in accordance with statutory procedure the matter will be brought back to Cabinet for consideration.

3. Issues and Choices

3.1 Report Background

- 3.1.1 The Council is the freehold owner of community land and property, held for social, recreational and community group use.
- 3.1.2 The Council has an extensive asset base but with reducing budgets and resources, has a duty to review land holdings, not only to reduce the cost of the holdings, but also to determine the best way to secure their future.
- 3.1.3 Several Cabinet reports have considered the maintenance and ownership of community held land and resolved that some community assets are best managed in the longer term by the communities that they serve, owned and administered by the Parish Councils. However, the proposal to create two unitary councils in Northamptonshire requires the Council to co-operate in the creation of West Northamptonshire Council and consider the impact of these transfers as part of the unification process.
- 3.1.4 The Council confirms that it will only transfer community assets where there is no detrimental effect on West Northamptonshire Council and give assurance

that suitable due diligence has been undertaken to assess the capability of the receiving Parish Council .

3.1.5 The Parish Councils were invited to express an interest in the community land and assets in their area and many sites were identified. Of these, the assets team have reviewed and agreed in principle to progress a limited proportion, to ensure that the Parish Council does not overstretch themselves financially and/or practically with the management of the property and land.

3.1.6 Each area of land has had the following assessment: -

- An initial land use assessment, to check the planning policy and assets register agree on the community status and that the intention is for the property and land to remain as community assets in perpetuity.
- Initial legal checks to determine sensible boundaries for the transfer of land, identifying any restrictive covenants (for public rights of way and other restrictions that support community use) and any other contractual obligations that run with the land.
- Meetings with the Parish Clerks to discuss and understand their resources for ongoing management, address any concerns of a practical nature. Part of these discussions involved understanding the vision for the land and property, to learn about the local volunteers and community support that is available to assist the Parish Councils.

3.1.7 The community centres have been reviewed with the Parish Councils to gain an understanding of the current situation and, where there are tenants involved, to check that the Parish Council has consulted them with their plans of ownership and that the tenants agree in principle. The community assets proposed for transfer are in all cases supported by the Parish Councils, either directly or indirectly and part of the transfer process includes ensuring the Parish Council understands their responsibilities and liabilities as Landlord.

3.1.8 Where the Parish Council is the tenant of the community centre, the lease will dissolve upon completion, as a result of common ownership (i.e the leasehold and the freeholder are vested in one person in the same capacity)

3.1.9 The community centres are not held to earn income, or as development sites, the annexures attached provides key information on each one. However, an independent valuation will be undertaken as part of the transfer process to ensure the Council considers the statutory requirement for best consideration.

3.1.10 This process has led the Council to conclude that the community asset transfer of the property and land annexed to this report will have a positive effect on the communities they serve, and that being owned and controlled by the Parish Councils this will facilitate proactive management and recreational use of the sites.

3.1.11 The Council have also concluded that the transfers will not have a detrimental effect on West Northamptonshire Council and will benefit from savings in the longer term. None of these assets are required for the delivery of statutory

services, nor to generate income, and this is unlikely to change in the reasonably foreseeable future.

3.1.12 Public sector organisations may transfer property among themselves without placing the asset on the open market, provided they do so at market prices and in appropriate circumstances*. They should follow the guidelines including: -

- Value assets at market prices
- Work collaboratively to agree the price
- Take legal advice
- The terms should not normally involve neither clawback (the rights to share disposal proceeds) or overage (rights to share future profits on disposal)

3.1.13 The transfer process follows these guidelines. The subject of overage was discussed in the Cabinet Report entitled “Community Asset Transfer of Cherry Orchard” on the 22nd January 2020 when Cabinet determined the terms of the transfer of Cherry Orchard, and the Cabinet Report concluded that overage was not an appropriate mechanism for this type of asset or this type of transfer.

3.1.14 As a reminder, overage is a means by which owners can be encouraged to sell land to those who are better able to achieve an uplift in the value of the land sold and are better placed to obtain any planning permission which is needed to achieve that uplift. They can be protracted to negotiate and particularly complex the longer the period of that the overage is to cover. They should only be used to promote development and where there is an expectation that the land may be brought forward for development

3.1.15 Key information on each asset, can be found on the annexures to this report but a summary of the assets under transfer is provided below for reference:

- a) Land adjacent to Little Billing Pocket Park (adjacent to site owned by Billing Parish Council)
- b) Ecton Brook Playing Fields
- c) Bellinge Community House
- d) Bellinge Community Centre
- e) Errington Park
- f) Grafton Way Park
- g) Melbourne Lane Open Space
- h) Mendip Park
- i) Blackymore Open Space and Community Centre
- j) Grangewood Park
- k) Penn Valley Park (Penvale Park)
- l) The Elgar Centre (includes land)
- m) St Crispin Community Centre (includes land)
- n) Farmclose Road Green
- o) Park from Curtlee Hill to Quinton Road
- p) Land Tudor Court to Curtlee Hill

- To provide greater assurance of the intentions to keep the asset for community purposes, the conveyance will include a restriction on the title to ensure the property and or land continues to be used as its existing use (public open spaces or community centres as appropriate) the main permitted use is for recreational use.
- There will also be a right of pre-emption should the Parish no longer require the land or centres for permitted use.

3.1.16 Where the transfer is public land the process includes the requirement by statute to advertise the disposal by public media, to allow members of the public to comment, and the Council will comply with its statutory obligations as outlined below at paragraph 4.3.2

3.2 Issues

3.2.1 The land and centres are intended to remain as public open spaces and community centres. The proposed transfer will contain the appropriate restrictions on the use of the land to ensure that it is not used for other purposes. The land and centres will be transferred subject to any existing public rights of way and title covenants.

3.3 Choices (Options)

3.3.1 The Council could retain ownership of this area of public open space and community centres. This would negatively impact Council resources, both financially and operationally, continuing to hold this size of portfolio is not sustainable. Additionally, retaining ownership does not support the drive to transfer community asset into local ownership.

3.3.2 The Council could retain ownership of this area of public open space and centres granting a peppercorn long leasehold interest in the land to the Parish Councils. The landlord and tenant leasehold mechanisms were not designed for this purpose, it would not achieve any more control over the land may increase the amount of legal, estates and operational management costs.

3.3.3 The recommended option is to transfer the sites based on the recommendation above.

4. Implications (including financial implications)

4.1 Policy

4.1.1 This report sits within the policy determining community asset transfer to Parish Councils will be on a Freehold basis. See Cabinet Report entitled "Transfer of Land and Open Space to Parish Councils" dated 17th October 2018 which amended the Council Owned Asset Strategy adopted by Cabinet on 16th November 2016.

4.2 Resources and Risk

- 4.2.1 These community assets are held on the council asset register with a nominal capital value, reflecting the existing use. To ensure the transfers achieve value for money a market valuation will be completed and Economic Growth and Regeneration Manager, in consultation with the Borough Secretary, Chief Finance Officer and Cabinet Member for Regeneration and Enterprise will authorise the transfer.
- 4.2.2 Each Council will pay their own legal estates costs.
- 4.2.3 Northampton Borough Council also charge special expenses for the maintenance of their parks and open spaces as part of the Council Tax. These costs will be factored into the valuation to assist in determining the market value and the transfer price. The Council may continue to charge the special expenses where grass cutting services are provided and each site will be reviewed on a case by case basis.
- 4.2.4 All contractual open space grounds maintenance costs will be determined and factored into the market valuation to ensure the Council achieves value for money.

4.3 Legal

- 4.3.1 Pursuant to the provisions of Section 123 of the Local Government Act 1972 (LGA 1972) under s123 (1) LGA 1972 the Council has the power to dispose of land in any manner it wishes subject to a caveat under s123(2) of the LGA 1972 which states that the land must be sold at the best reasonably obtainable price, It follows therefore that the Council as trustee in relation to the land it holds on behalf of the community has a statutory duty to sell the land at the best price reasonably obtainable, unless the exception under the General Disposal Consent (England) 2003 applies.
- 4.3.2 In addition to the above there are further procedural steps that the Council are required to comply with in order to meet its statutory duty under s.123 LGA 1972. Pursuant to s.123 (2A) of the LGA 1972 in advance of any final decision to dispose of any open space land the Council must first advertise its intention to do so in a local newspaper for two consecutive weeks and thereafter consider any objections received.
- 4.3.3 When considering the question of best price that can reasonably be obtained the Council may have regard to ethical as well as commercial considerations, however although such considerations may be a factor in deciding to sell at a certain price they must be in balance.
- 4.3.4 It is noted that the independent market valuation referred to above will take into account a number of factors as part of the independent market valuation. Where such factors form a material part of the consideration, (ie require the Parish Council to assume onerous obligations such as a restrictive covenant) it is likely to be a sale at an undervalue.

4.3.5 As noted in paragraph 4.3.1 above, the General Disposal Consent (England) 2003 provides consent for the Council to dispose of land for less than best consideration that can reasonably be obtained where the Council considers the purpose of disposal at less than best price will achieve the promotion or improvement of the economic, social or environmental wellbeing for the area and/or local residents, subject to the caveat that in all cases disposal at less than best consideration that the undervalue does not exceed £2,000,000 (2 Million)

4.3.6 Notwithstanding paragraph 4.3.5 above, the Council nonetheless needs to ensure that it complies with normal prudent commercial practices and obtain an independent market valuation which sets out the unrestricted value (best price reasonably obtainable) the restricted value together with the value of the conditions. This will ensure that the monetary value had been taken into account by the Council.

4.3.7 In relation to the proposed terms referred to at paragraph 3.1.7 above; -

A restrictive covenant

As noted above it is possible for the Council to restrict the use of the land to be transferred to the Parish Councils, and such a restrictive covenant will be enforceable between the original contracting parties as a matter of contract.

Restriction noted on the Parish Council's Title

The Parish Council will be required to register an entry on the proprietorship register of their title which will have the effect of restricting the registration any disposition that the Parish Council may wish to make without the consent of the Council.

The presence of such a restriction will ensure that the Parish Council continues to comply with the obligations placed upon by the Council, and ensure no disposition can be registered with HM Land Registry unless the restriction has been complied with.

A right of pre-emption

This can also be known as a "right of first refusal". Such a right will ensure that should the Parish Council wish to dispose of the land the Council will have the first opportunity to take the land back from the Parish Council should the Council wish to exercise its right so to do.

4.4 Equality and Health

4.4.1 There are no equality issues identified. The land and property would remain accessible to the public and be available for all groups in the community to use.

4.5 Consultees (Internal and External)

- 4.5.1 Corporate Management Board, Legal, Environmental Services, Community Safety, Assets, Planning, New Duston Ward, Old Duston Ward, East Hunsbury Ward, Nene Valley Ward and Billing Ward Councillors.
- 4.2.1 Bellinge Community House Board of Trustees have been consulted about the transfer to Billing Parish Council and given their full agreement to the proposal.
- 4.2.2 Billing Parish Council have held preliminary discussions with Community Spaces Northampton (CSN) who are the tenant of Bellinge Community Centre and have given their support to the transfer of the freehold to the Parish Council. Billing Parish Council have agreed to honour the rent concession provided for in the side letter to the lease, so that the rent passing for CSN remains at £240.00.

4.6 How the Proposals deliver Priority Outcomes

- 4.6.1 The proposals support the Corporate Plan, specifically our strategic priority to create resilient communities.

4.7 Environmental Implications (including climate change issues)

- 4.7.1 There are no environmental implications identified.

4.8 Other Implications

- 4.7.1 None

5. Background Papers

- 5.1 *HM Treasury, Managing Public Money, Annex 4.15, Asset Management
- 5.2 Cabinet Report January 2020

6. Next Steps

- 6.1 Should Cabinet agree to the transfer, following the call-in period and should there be no issues, the transfer will complete.
- 6.2 Should Cabinet agree to the transfer, following advertisement of the transfer of public space following statutory guidelines, should there be no significant concerns, the transfer will complete.
- 6.3 Should Cabinet agree to the transfer and subject to satisfactory completion of 6.1 and 6.2, the transfer will complete on the terms recommended above.

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