



CABINET REPORT

Report Title	Transfer of Land and Open Space to Parish Councils
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AGENDA STATUS: Public

Cabinet Meeting Date:	17 th October 2018
Key Decision:	Yes
Within Policy:	No
Policy Document:	Yes
Service Area:	Economy, Assets and Culture
Accountable Cabinet Member:	Cllr. T. Hadland
Ward(s)	Various

1. Purpose

- 1.1 This report seeks Cabinet agreement to a refreshed strategy on the transfer of Council owned assets, primarily areas of land and open space, to Parish Councils.

2. Recommendations

It is recommended that Cabinet:

- 2.1 Agree to amend the strategy adopted by Cabinet on 16th November 2016;
- 2.2 Agree that future transfers to Parish Councils will normally be on a freehold rather than long leasehold basis;
- 2.3 Agree that where assets to be transferred are commercial in nature, a commercial sale price will be appropriate;
- 2.4 Agree that where assets to be transferred are non-commercial in nature, a nominal consideration will be charged;
- 2.5 Agree that all freehold transfers will include appropriate overage provisions;

- 2.6 Authorise the advertisement of the proposed disposal of any areas of Public Open Space in a local newspaper for two consecutive weeks in accordance with the procedural requirements of Section 123 (2A) of the Local Government Act 1972, and thereafter for the Cabinet to agree to meet to consider any objections to the proposed disposal which may be made to them before any final decision is taken on the disposal, so that proper consideration is given to the responses that are received.
- 2.7 Delegate to the Head of Economy, Assets and Culture, in consultation with the Cabinet member for Regeneration and Enterprise, authority to negotiate and agree in principle the terms of any transfer/disposal on a freehold basis in accordance with the parameters of this report and subject to the agreed terms of each proposed transfer/disposal being subsequently approved by Cabinet..

3. Issues and Choices

3.1 Report Background

- 3.1.1 The Council (Northampton Borough Council) owns areas of land within Parishes, including parks and open spaces, which are managed by and maintained by the Council.
- 3.1.2 The Council charges special expenses to its residents as part of its Council Tax charge. This special expense charge is primarily used to contribute to the cost of maintaining parks and open spaces in the Borough. Because these smaller parks and open spaces are not evenly distributed across the Borough, the special expense charge (unlike the main Council Tax element) differs across the perished areas of the Borough.
- 3.1.3 In response to requests from some Parish Councils, in November 2016 Cabinet authorised Officers to commence negotiations with Parish Councils to transfer to them areas of land and open space in order to facilitate their local management. Cabinet resolved that any disposal should be done by way of a long lease with flexible provision for termination, benefitting both parties.
- 3.1.4 The effect of transfer would be that responsibility for maintaining the transferred areas would be transferred to Parish Councils, as would the funding of that maintenance. This might require increases in the Parish Precept, unless the costs could be accommodated within their existing budgets.
- 3.1.5 Since approval of the November 2016 Cabinet report the Council has received several requests for transfer of assets. In each case, the negotiations over the terms of the leasehold transfer have been complex and prolonged, and both Parishes and Members have indicated that a transfer of the freehold interest would be simpler and preferable.

3.2 Issues

- 3.2.1 A number of the assets which will be considered for transfer will comprise land designated as Public Open Space. Any proposal to dispose of land designated as Public Open Space will require the Council to comply with S. 123 (2A) of the Local Government Act 1972. The Council will be required to advertise its intention in a local newspaper for two consecutive weeks and to consider any objections prior to any final decision on the disposal is taken.
- 3.2.2 Transferring the freehold of land to Parish Councils will remove the Council's ability to control the usage of that land. Any transfer will therefore include provisions that:
- (a) Protect the open space status of the land; and
 - (b) Provide that any development that may become possible at some time in the future can only be carried out with the permission of the Council or its statutory successor in title, and that the Council or its statutory successor in title will receive 100% of the increase in value of the land (the overage).
- 3.2.3 S. 123 (2) of the Local Government Act 1972 imposes a duty on the Council upon a land disposal to obtain the best consideration reasonably obtainable. There are two scenarios to be considered:
- 3.2.3.1. First, the asset being transferred has some commercial purpose or monetary value i.e. provides, or could provide, an income stream to either the Council or the Parish Council. In those circumstances the commercial value of the land will be determined by an Independent Valuer, and the Parish Council will be required to purchase the asset from the Council at that price and subject to normal commercial terms
- 3.2.3.2 Second, where the asset being transferred has no commercial purpose or value. In these instances, the disposal will be for a nominal charge of £100. The Parish Council will also be responsible for any legal and other fees incurred by Council in undertaking the transaction.
- 3.2.4 Where the disposal has been undertaken at a nominal charge, as detailed above in paragraph 3.2.3.2, that transaction may be considered to be at an "undervalue" against a strict "open market" valuation of the asset. However, the Council can utilise the General Disposal Consent 2003 which in effect removes the requirement for the Council to seek consent from the Secretary of State for any such disposal where the undervalue is less than £2 million, and the disposal contributes to the economic, social or environmental well-being of the area. It is highly unlikely that any disposals will involve any significant undervalue, and placing the ownership and maintenance of this type of asset in the hands of the local community through the Parish Council will satisfy the social and environmental well-being criteria by empowering local communities resulting in more responsive asset management.

3.3 Choices (Options)

- 3.3.1 Members can choose to amend the strategy, which will streamline the transfer of assets to Parish Councils, reduce the amount of resource involved in effecting such transfers, satisfy the Council's requirement to obtain best value from its assets and improve the Council's relationship with the Parish Councils.
- 3.3.2 Members can choose not to amend the strategy, which will mean that any future requests for transfer will be considered on a long leasehold basis only.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 This report seeks to amend and improve the existing strategy agreed by Cabinet on 16th November 2016.

4.2 Resources and Risk

- 4.2.1 Should assets be transferred pursuant to this report, it is anticipated that there would be a reduction in the cost to NBC of management and maintenance. However, there would also be a discontinuance of special expenses charge which it is anticipated would result in a broadly neutral position for NBC.
- 4.2.2 Some of the assets that may be transferred while having no commercial value now might possibly have significant value in the future should, for instance, the Planning status of an area of land change. In these circumstances, the Council's position is protected by the 100% overage provision which will be put in place at transfer of the asset.
- 4.2.3 The Council's ability to transfer some assets may be restricted by title or legal constraints, including claw back provisions
- 4.2.4 There may also be a requirement to transfer to the Parish Council's any S.106 monies that have been received for the maintenance of the open space being transferred. This in turn would lead to a loss of interest which the Council earns on those monies it holds.

4.3 Legal

- 4.3.1 The legal and financial implications of S.123 of the Local Government Act 1972 have been covered in Paragraphs 3.2.1 to 3.2.4 and 4.2.1 to 4.2.4 of the report.

4.4 Equality and Health

4.4.1 An Environmental Impact Assessment is not considered necessary as the proposals in this report would not adversely impact on public use of open space and other facilities.

4.5 Consultees (Internal and External)

4.5.1 The Parks Service have been consulted. Consultation has also been carried out with the Lead Member for Regeneration and Planning, the Lead Member for Community Engagement and the Deputy Leader of the Council.

4.6 How the Proposals deliver Priority Outcomes

4.6.1 The proposals in this report will increase the involvement of residents in the management and maintenance of local assets.

4.7 Other Implications

4.7.1 There are no other implications arising from the recommendations in this report.

5. Background Papers

5.1 The Cabinet report of 16th November 2016 forms the basis for the current policy which this report seeks to amend.

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