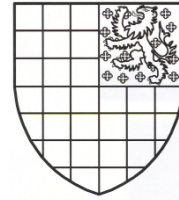


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**LEWES
TOWN
COUNCIL**

To: Cllrs Burrows; Catlin; Earl; Henman; Mayhew and Wood

A Meeting of the **Devolution Working Party** will be held on **Friday 29th November 2019**, in the **Council Chamber, Town Hall**, Lewes at **11:00am** which you are summoned to attend.

S Brigden, Town Clerk
19th November 2019

AGENDA

1. ELECTION of CHAIRMAN

To elect a Chairman for the Working party for the 2019/20 municipal year

2. APOLOGIES FOR ABSENCE:

To receive apologies from members of the working-party who are unable to attend.

3. MEMBER'S DECLARATIONS OF INTEREST:

To note declarations of any personal or prejudicial interests in matters on this agenda.

4. QUESTION TIME

5. EXCLUSION of the PRESS & PUBLIC

As this Working Party will discuss details related to proposed contract negotiations; the Chairman will be obliged to move before proceeding:

“That in view of the confidential nature of the business to be transacted during the remainder of the meeting - which is detail related to proposed contracts; pursuant to the Public Bodies (Admission to Meetings) Act 1960 s1(2); any members of the press or public present be excluded and instructed to withdraw”

6. REMIT of the WORKING PARTY

To note the remit of the Working Party, which is tasked with oversight of negotiations with Lewes District Council regarding devolution of local assets or services.

7. BUSINESS OF THE MEETING

To consider matters within the remit of the committee:

- a) Review of devolution process *(Report DevWP001/2019 attached)*
- b) Current position *(District Council Cabinet report attached – other papers will be available at meeting)*
- c) Consider recommendations for Council.

For further information about items on this agenda please contact the Town Clerk at the above address.

This agenda and supporting papers can be downloaded from www.lewes-tc.gov.uk

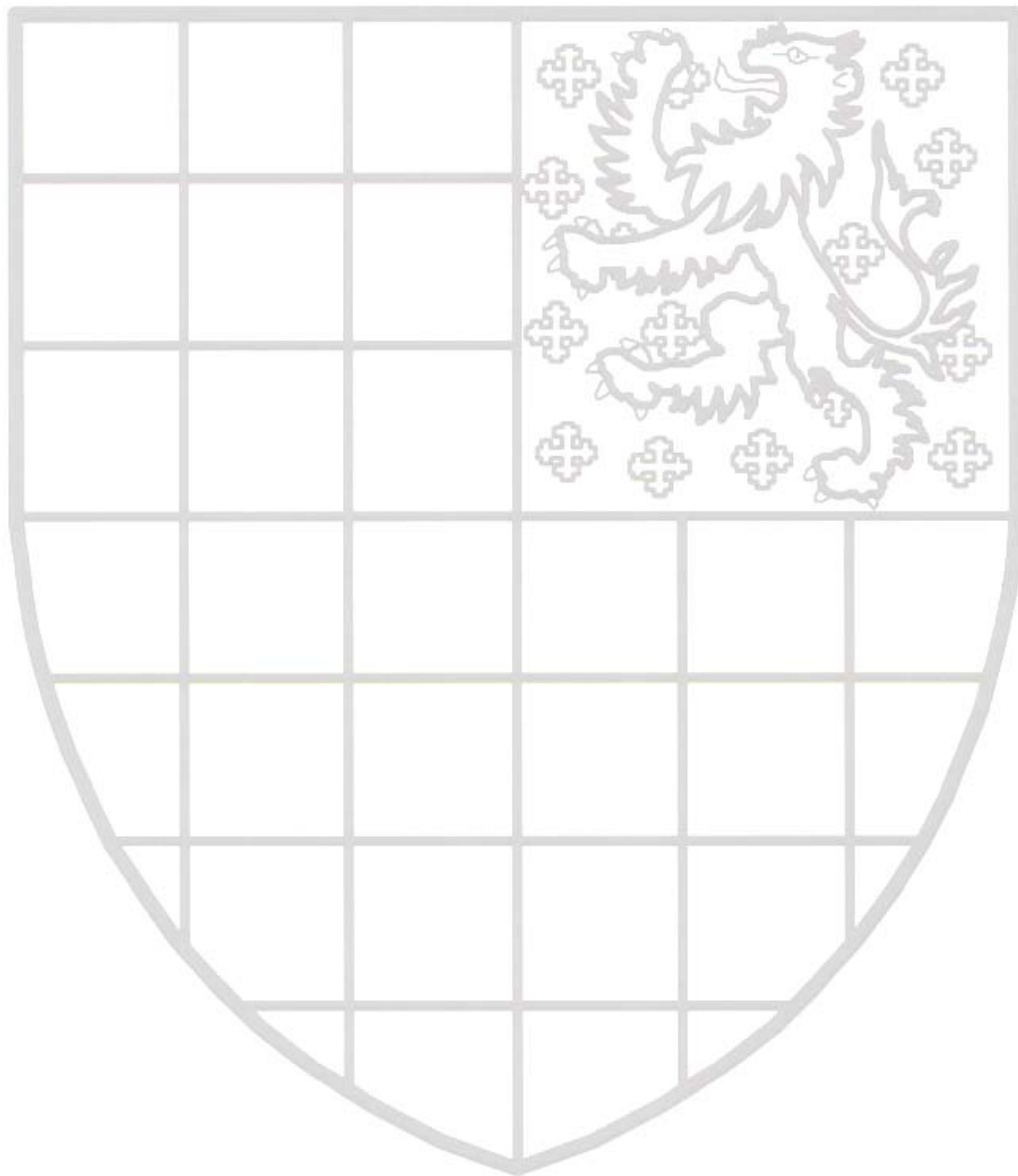
PUBLIC ATTENDANCE: Members of the public have the right, and are welcome, to attend meetings of the Council – questions regarding items on this agenda may be heard at the start of each meeting with the Chairman's consent, and subject to time available. Questions or requests to address the Council should, whenever possible, be submitted in writing to the Town Clerk at least 24 hours in advance. **PLEASE NOTE:** As space is limited we would appreciate advanced warning if you plan to attend in a group; perhaps with neighbours, or to bring a party of student observers. We may be able to arrange for the meeting to be held in an alternative room. General questions can be raised at our offices between 9am-5pm Mons- Thurs; 9am-4pm on Fridays – our staff will be pleased to assist.

Distribution: Cllrs Baah; Bird; Catlin; Handy; Herbert and Maples

Copies for information:

All councillors; T/hall; LTC website; Lewes Library, Sx. Express, E.Argus, Sx. Police, M CaulfieldMP, LDC, ESCC, Fr'ds of Lewes

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Agenda Item No: 7b) **Report No:** DevWP001/2019
Report Title: UPDATE REPORT - Background and status of Devolution of Lewes District Council assets
Report To: Devolution Working Party **Date:** 29th November 2019
Report By: S Brigden, Town Clerk (TC)

Purpose of Report: To provide background information and to acquaint Members with the present status of devolution by Lewes District Council (LDC) and indicate future prospects.

Recommendation(s):

- 1 That this report be noted.
- 2 That Members carefully consider the Council's position regarding future devolution and associated matters, as described in this report.

History:

1 Following preliminary informal talks and previous mutually-agreed transfers (*eg* Allotments; Priory; Pells) several years earlier, more structured negotiations on the devolution of all parks and open spaces, and other LDC assets in Lewes, between leaders of Lewes District Council and Members of Lewes Town Council (LTC), had commenced in 2011. Meetings had been held on

28 th January 2011	14 th November 2011	31 st October 2013
10 th February 2011	18 th October 2012	9 th October 2014
9 th June 2011	29 th November 2012	

These meetings were each reported back to Council in due course. The 'negotiation' was characterized by repeated cancellations and long periods of inaction and changes of personnel on the part of the District Council. Minutes of a Town Council group internal briefing meeting in July 2013 note that "LDC had introduced new policies since the last discussions, which had again been interrupted, and there was a desire [on LTC's part] to re-establish the programme of negotiations."

2 At its meeting on 6th November 2014 the Town Council resolved (*Minute FC2014/69.3 refers*) to pursue the transfer of the 50% interest in Landport Bottom currently owned by Lewes District Council, and also Mallong Recreation Ground (with boundaries as agreed at the meeting [*copy in Minute book*]).

3 The requisite Reports on Title and draft transfer agreements were received from LDC in December 2014, and caused the Town Council's solicitor, Ian Davison, to raise a number of technical questions, in particular relation to Mallong Recreation Ground. It was contended that there were some erroneous applications of law, and clauses which he considered were likely to significantly disadvantage the Town Council in its ownership and management of the land which, LDC proposed, would extend for 50 years from the date of transfer. Mr Davison has considerable experience in this field, having conducted devolution negotiations in Wealden District and elsewhere in the South-East, and was also retained by Newhaven Town Council for similar transfers from LDC. He had acted in similar transfers from Government departments including the Ministry of Defence. The elections of May 2015 then interrupted, and it was 2nd October 2015 before a meeting could be arranged with LDC's legal and property management officers to address the points highlighted. At this meeting the concerns of the Town Council were detailed, and it was agreed that some amendments should be submitted to LDC in the spirit of that discussion. These were drafted and submitted in November 2015, and did not suggest any change that substantially undermined LDC's position. We had reiterated our view on the over-complication of the "overage" approach but nonetheless accommodated their insistence that it be applied.

4 On 11th February 2016 there had yet been no response from LDC, and TC emailed LDC's Head of Legal Services and the Property & Facilities Manager to prompt some reaction; including a copy of the proposed amendments. A response was received from a Legal Department officer the following day, contesting most of Mr Davison's amendments but offering little support for the contrary

position taken by LDC on each. Our solicitor had highlighted very real potential for this Council to face disproportionate cost and effort in the future on the arising of foreseeable events. LDC offered no counter-arguments to the points raised – merely insisting upon adherence to their original draft

Mr Davison replied with a detailed review of each of his proposals and its foundation in law, but the response was an abrupt refusal to negotiate further. In a ‘parallel’ strand of communication, the District’s Property & Facilities Manager presented a wholly different standpoint from that exhibited at the meeting in October, and indicated that she would be proposing to LDC’s Cabinet that LDC should “retain the grant payable to the Town Council in lieu of Special Expense charge for 2016/17”, which had not been levied by LDC for the Malling site for the 2015/16 year. At that point it was not clear that the grant in question was the £53,128 payable under the government’s Local Council Tax Support Scheme – introduced to mitigate effects on parish Councils of national changes to tax-base calculation factors. An explanation was requested but no further communication was received.

5 At LDC’s Cabinet meeting on 21st March 2016 the Leader of the District Council presented a report on the status of devolution and it was subsequently resolved “74.3 That the current position relating to the transfer of Malling Recreation Ground to Lewes Town Council be noted, that the grant payable to Lewes Town Council in lieu of the Special Expenses charge for 2016-2017 be retained as necessary and that the Officers be instructed to suspend work on the transfer of the Malling Recreation Ground site to Lewes Town Council.”

6 The procedure to have this decision reviewed by the LDC’s Scrutiny Committee was commenced (although there was no compulsion that could be exercised), on the grounds that:

- a) it was believed that the presentation of the report contained misleading information regarding the Town Council’s standpoint, and that this prevented a reasonable decision being reached.
- b) the withholding of an unrelated grant (intended by government to be passed-on to mitigate tax adjustments, included by both LTC and LDC in statutory calculations for their 2016/17 Council Tax requirement) in these circumstances, was believed to be unlawful and challengeable by judicial review.

7 It should be noted that the transfer of the District Council’s 50% share of the jointly-owned land at Landport Bottom was unaffected by this contention, as LDC accepted that the transfer is simpler in nature.

8 On 7th April 2016 Lewes Town Council considered a report (*Report FC015/2015*) and associated evidence, together with professional advice and recommendations provided by the Council’s solicitor, and consequently commissioned a review by a specialist barrister. This Counsel’s report, received in June 2016, confirmed that the decision by LDC’s cabinet was unlawful and admissible for judicial review. At around the same time, LDC’s own internal review reported to Cabinet in the same vein. No correspondence was received but the grant was released shortly thereafter.

9 Following a change of Chief Executive at LDC in 2016, a brief meeting was held in July at which the incoming CE agreed to address the suspension of negotiations. Subsequently; they produced revised ‘heads of terms’ for use in transfers to Newhaven Town Council which the solicitor had considered acceptable, as they broadly accommodated his original suggestions. If subsequent contract drafts accurately reflected the declared principles it would allow Lewes Town Council to ask LDC to remove its embargo on transfer of Malling Recreation ground and the LDC share of Landport Bottom. There had been no further development since the last report, and the progress on contract drafting was unknown. In anticipation of reaching a point at which the embargo may be lifted, TC asked Councillors for a decision on their continued desire to complete the transfers, and their inclination to pay over to LDC all or part of the £40,000 raised by precept *iro* the Malling rec site for 2016/17 to compensate them for having excluded that site from the year’s Special Expenses levy. It was resolved that:

FC2016/47.1 Lewes Town Council remains willing to accept ownership of Malling Recreation Ground and Lewes District Council’s 50% share in land at Landport Bottom, subject to acceptable revision of certain clauses in formal transfer agreements; also:

FC2016/47.2 Lewes Town Council will consider transfer of up to £40,000 to Lewes District Council in respect of grounds maintenance costs for Malling Recreation Ground in 2016/17, subject to further negotiation and transfer of ownership of the site.

10 TC wrote in January 2017 to LDC’s Chief Executive to insist that LDC reconsider its decision to cease dealings, and re-start the transfer of Malling Recreation Ground and LDC’s 50% share in land

at Landport Bottom. The last-mentioned should not, technically, have been suspended as it was not covered by the Cabinet decision and falls into a different class of land (no capital value applies), but no further work had been done on that either.

11 In October 2017 TC was again forced to write to advise of this Council's concerns regarding lack of progress and to seek the C Exec's intervention. Following constructive dealings in January, a LDC legal officer had very promptly been in-touch with our solicitor and it had seemed that the issues were behind us. Indeed; it was stated that LDC "were keen to proceed". Almost all outstanding details had been identified and discussed between them by mid-March and final documents were awaited. All appeared to be progressing at long last and on 7th April, in apologizing for a short break in communication, LDC's officer noted that "we [her client]... have agreed to prioritize devolution matters this month and I hope to come back to you shortly". Further progress *was* made on the transfer of LDC's 50% share of Landport Bottom, albeit that the pace again slowed to a crawl. With regard to Malling Recreation Ground, however, there had been no further progress on the transfer and no documentation or discussion since April, despite enquiries as to progress.

12 By coincidence, when reading LDC's cabinet agenda for 27th September 2017 TC had discovered (item 9.2 - Report 124/17 *Portfolio progress and performance report 2017/18 Q1*) that:

- Para 15. "Devolution of open spaces remains on schedule, with transfer of sites to Lewes Town Council and Newhaven Town council progressing well" and;
- Appendix 1 (p37 of 165 in agenda pack - *Portfolio Cllr Nicholson: 'Customers & Partners'*)

"...Agreement reached with Leader to retain the Lewes Malling Recreation Ground at present and for the site to be the last to be devolved"

13 It had been made clear from the outset of this process that the Town Council had identified Malling Recreation Ground in the first devolution tranche (*all* Lewes parks and open spaces were originally mutually agreed for eventual transfer) in order to 'streamline' and assist in evolving plans for play and recreation improvements ancillary to the North Street Quarter development. The reasoning was to effectively offer the developer a single body to deal-with regarding the recreation space to both sides of the NSQ site; as LTC already own the Pells and a section of Malling Rec including the Community Centre (which houses changing facilities for the recreation ground's sports pitches).

14 LDC suggested that the anticipated need for part of the riverbank within Malling Rec for new footbridge abutments made transfer impractical. LDC had already intimated that previously-agreed site plans for Malling Rec "may be amended" to allow for the footings of the proposed new pedestrian bridge from NSQ, and LTC questioned why the Town Council could not simply be asked (or legally-bound if it was not to be trusted) to provide land for the bridge footings when required. Further; it asked for an explanation of the statement contained in the cabinet report, and insisted that LDC either undertook to adhere to agreements reached originally several years ago, or explained openly why it would not.

15 LDC's Chief Executive, and the Assistant Director of Legal & Democratic Services met with TC on 8th January 2018 and repeated the view that the matter of future bridge abutments, which could not yet be specifically located, prevented the transfer. TC suggested that contracts could easily provide for a flexible future location, subject to survey, and an undertaking by LTC to donate the required land, but that argument did not alter their view.

16 Transfer of Landport Bottom progressed slowly in the background, and was drawing towards a conclusion at this point.

17 A meeting was convened between LDC officers and Members and LTC Members to discuss the matter. This took place on 18th April 2018, and eight LTC Members attended with TC, plus Cllr Catlin who chaired the meeting in his District Council capacity (Chair of the Devolution Committee). The LDC position regarding Malling Recreation Ground was unchanged, and discussion ranged around principles and other sites. It was understood that whilst LDC had only considered Parks & open Spaces for devolution, LTC was free to make proposals regarding other assets such as the redundant office building at 2 Fisher Street. It was agreed that:

- Completion of transfer of land at Landport Bottom from LDC to LTC was imminent. All legal documents had been finalised and were ready for execution. LDC to confirm two minor points on relevant schedules with LDC's Parks team later that week, prior to execution.
- Previous Minutes of the District Council's Devolution Committee which identified a longlist of possible sites for devolution to the town council would be revisited. LTC would be notified if there was any change in circumstances which meant any of these sites were no longer considered (by LDC) suitable for devolution.
- LDC officers would identify those sites which might be easiest and quickest to devolve to the town council; and notify LTC.
- LTC Members attending would confirm to their council meeting on 21 June 2018 their agreement that LTC should not pursue devolution of Malling Recreation ground for the time being. They would recommend that LTC consider and choose any alternative site or sites on the longlist for early devolution and then make a request for the devolution of this/these.

18 Final documents to effect the transfer of Landport Bottom were delivered to TC on 10th May 2018; executed promptly, and returned for forwarding to the counterparties on 16th May. All that remained was registration of third-party documents (*eg* Higher Level Stewardship Scheme undertaking; grazing licence), and completion of formalities by LDC. Transfer was finally concluded in July 2018.

19 LTC subsequently received the proposal of sites identified for early transfer:

- Timberyard Lane play area
- The Paddock play area (including defunct WCs)
- Bell Lane

This was considered by Council on 21st June 2018, and TC pointed-out that, in a 2015 report to LDC's own Devolution Committee, two of these sites had been listed as "possibly contaminated land", and one was leased from ESCC and contains a derelict public convenience and an expensive-to-repair flint wall in need of urgent work to ensure public safety! They represented significant burdens in terms of cost and administration, yet ownership would effectively confer no benefit on LTC or the local community.

It was subsequently resolved that:

FC2018/26.1 Lewes Town Council reluctantly acknowledges the decision by Lewes District Council to withdraw Malling Recreation Ground from the devolution process for the time being, and requests immediate notification when these circumstances change.

FC2018/26.2 The offer, by Lewes District Council, to devolve Timberyard Lane play area; The Paddock play area (including defunct WCs), and Bell Lane, is politely declined.

FC2018/26.3 Lewes District Council is asked to consider, at its earliest convenience, terms upon which Lewes Town Council might acquire ownership of the District Council's redundant premises at 2 Fisher Street, Lewes and also the Market Tower, Market Street, Lewes.

FC2018/26.4 Lewes District Council is asked to consider terms upon which Lewes Town Council might assume the Trusteeship of the Convent Field Trust, including the off-street car park.

FC2018/26.5 Lewes District Council be notified that the Town Council may be interested to assume the Trusteeship of the Stanley Turner Trust in a future tranche of devolution.

20 These decisions were passed to LDC with a reminder that: with regard to 2 Fisher Street, LTC had indicated interest for many years (having a "gentlemen's agreement" with a past Chief Executive years before the building became surplus to LDC's requirements in 2012). As for the Market Tower – LTC had some years earlier assisted LDC in relocating their tenants, Lewes Operatic Society, by providing accommodation for LOS in the rear annexe to the Town Hall on similar terms. In recognition of the intention to ultimately transfer the Tower to the Town Council (to allow unfettered transfer and subsequent planning) LDC originally limited the licence to the present Friday Food Market to a short-term arrangement (one-year renewable license), although they have subsequently been given a longer-term lease.

Recent events and current position:

21 LDC have consciously limited the remit of their Devolution Committee to matters related to parks & open spaces – this having its roots in the long-standing “Special Expenses” debate. Disposal of buildings or services is dealt-with alongside other LDC business by lead officers and cabinet.

22 LDC have consulted the Charity Commission, and it is understood that the Commissioners do not consider it necessary to draft a Scheme for transfer of the Trusts in respect of the Stanley Turner or Convent Field sites. This leaves the way open for a relatively straightforward transfer, although the Town Council will need to exercise caution as, in its present form, the staff capacity for the Town Council to manage the sites is minimal. It is feasible that a short-/medium-term arrangement might be agreed such as that for Landport Bottom, where the Town Council buys the services of the District to effectively continue day-to-day oversight and management, until a ‘tipping-point’ is reached with further land acquisitions, when LTC will probably wish to employ its own dedicated staff. This broader issue is one that overlaps with consideration of the Town Council’s need for additional office space to accommodate any growth in staff numbers.

23 Since the discussions described, elections have changed the political complexion of LDC. Lewes District Council Cabinet agreed a ‘key decision’ on 1st July 2019, as:

(Key decision): Enabling the development of Community Assets - Market Tower, Lewes and 2 Fisher Street, Lewes

(1) To agree in principle to the disposal of the freehold of Market Tower and 2 Fisher Street to Lewes Town Council.

(2) To delegate authority to the Director of Regeneration and Planning in consultation with the Chief Finance Officer and the Portfolio Holder for Regeneration and Growth to agree the final disposal terms subject to:

(i) a red book valuation undertaken by a qualified person for both assets, and

(ii) further legal due diligence and exploration of the potential for including restrictive covenants controlling the future use of the properties and overage clauses enabling the Council to share in any future increase in value in the properties realized after the properties have been sold.

The scope of the delegation to the Director to include the potential for disposal at an under value in accordance with circular 06/03 where it is considered that this will help to secure the promotion or improvement of the economic, social or environmental well-being of the Council’s area.

(3) To authorize the Director of Regeneration and Planning on consultation with the Chief Finance Officer and the Portfolio Holder for Regeneration and Growth to undertake all actions required to complete the disposal of the properties above including authorizing completion of legal documentation.

(4) To note that a further report will be submitted to Cabinet in the Autumn of 2019 setting out the Council’s approach and policy towards community assets.

Justification: To provide community groups and Town and Parish councils the ability to manage their own estate therefore enhancing the opportunity for them to achieve inward investment and development whilst relieving pressure on the Council’s limited resource.

24 LDC’s Head of Property, Delivery and Compliance, very recently presented to both Eastbourne Borough Council and Lewes District Council cabinets a Property Disposal and Transfer Policy, which was agreed by Lewes’ cabinet on 28th October. This correctly describes the option for LDC to lawfully transfer assets at up to a £2M undervalue if it resolves that the transfer is for community benefit. It is known, however, that formal valuations of the respective freeholds have been obtained, and this will be the fundamental issue related to transfer. NB – 2 Fisher Street has recently suffered some significant damage, with a ceiling collapse on an upper floor.

25 The policy mentioned at 24 above is now the prevailing position for LDC, and the Town Council will need to consider its own priorities for both the devolution of further open spaces, and buildings and/or services.

S Brigden

November 2019

Report to:	Cabinet
Date:	28 October 2019
Title:	Property Disposal and Transfer Policy Revision
Report of:	Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning
Cabinet member:	Councillor Zoe Nicholson, Leader of the Council
Ward(s):	All
Purpose of report:	For Cabinet to agree revisions to the Property Disposal and Transfer policy to include reference to Community Asset Transfer and Devolution.
Decision type:	Key Decision
Officer recommendation(s):	To agree that revisions to the Policy Disposal and Transfer Policy to include provision for Community Asset Transfer be adopted by Cabinet.
Reasons for recommendations:	The Policy Disposal and Transfer Policy needs to be updated to include provision for Community Asset Transfer.
Contact Officer(s):	Name: Mark Langridge-Kemp Post title: Head of Property, Delivery and Compliance E-mail: mark.langridge-kemp@lewes-eastbourne.gov.uk Telephone number: 01323 415876

1 Introduction

- 1.1 On 1st July 2019, Cabinet was presented with a report entitled 'Enabling the development of Community Assets – Market Tower, Lewes and 2 Fisher Street, Lewes'; the report asked Cabinet for in principle agreement to the disposal of these community assets to Lewes Town Council and stated that a further report would be brought back to Cabinet regarding a future Community Asset Transfer (CAT) policy. This report sets out proposed revisions to the Property Disposal and Transfer Policy in order to include reference to CAT.

2 Proposal

- 2.1 Cabinet adopted the Corporate Asset Management Plan (AMP) in 2017. The AMP focuses on 4 key areas:
- Improving yield from the investment portfolio.
 - Reducing maintenance costs and liabilities.

- Delivering efficiencies through smarter procurement.
- Increasing the capital value of the Council's asset base.

The AMP provides the strategy framework for the Council to manage and maximise the potential of its property portfolio. A key part of the AMP is the need to unlock potential through Asset Challenge and ensure that retained assets combine social, cultural, environmental and economic benefits.

- 2.2 A number of policies were adopted in support of the AMP, including a Property Disposal and Transfer Policy; this policy has now been revised to include reference to CAT and Devolution.
- 2.3 CAT is the transfer of management and/or ownership of property to an organisation where there is an identified social, economic or environmental benefit. Community-based organisations can sometimes be better placed than local authorities at securing investment through sources such as the National Lottery, crowdfunding, sponsorship and legacies. Having control over their assets can enable these organisations to become more self-sufficient, secure and sustainable whilst also ensuring the long-term community benefit of assets. The revised policy is attached at Appendix A.
- 2.4 The Property and Disposal Policy has been updated to ensure future assets disposal considers the financial impacts on the Council's Medium Term Finance Plan. Other updated sections include—
- Working strategically with partners to reduce the Council's Carbon Footprint through identifying the least efficient properties and ensuring disposal properties are compliant with all existing and future energy requirements;
 - Definition of surplus asset for disposal;
 - Disposal of surplus assets by freehold or leasehold disposal;
 - Financial criteria for disposals;
 - Valuations for disposal and updating the Council Asset Register;
 - Procedures re the disposal of land.
- 2.5 The AMP itself is due for a refresh in 2020 and reference to CAT will be included at that time.

3. Corporate plan and council policies

- 3.1 The Property and Disposal Policy is a key part of the AMP which meets the following aspirations of the Corporate Plan: Resilient, healthy and engaged communities - protecting the future of assets for local communities and enabling their future investment; Improved customer service and Delivering sustainable services – by reducing on-going liabilities and expenditure by the Council; and, Prosperous economy – enabling future community uses;
- 3.2 In addition, this proposal meets the aims of the adopted Corporate Asset Management Plan by reducing maintenance costs and liabilities and ensuring that the Council only holds property that meets corporate aims and objectives.

4. Financial appraisal

- 4.1 There are no immediate financial implications arising from the recommendation in this report other than those already contained within existing budgets. Future assets disposal activity arising from adoption of this revised policy will be subject to viability analysis and due financial diligence.

5. Legal implications

- 5.1 The revisions to the policy relate to Community Asset Transfers (“CAT”) and the policy includes the additional legal considerations required when considering a CAT which relate to disposals at an undervalue and state aid.
- 5.2 The revisions to the policy also relate to devolution of open spaces to Town and Parish Councils and state that devolution is guided via the Devolution Committee. The policy also includes the further procedural requirements relating to advertisement that must be complied with on disposal of open space land.

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6. Risk management implications

- 6.1 The proposals in this report do not create any additional risks for the Council. Revision of the Disposals and Transfer Policy to include provision for Community Asset Transfer will provide a clear and transparent process for dealing with future proposals where transfer of a property to a community organisation is considered.

7 Equality analysis

- 7.1 An equality analysis has been undertaken and has not identified any equality impacts as a result of this policy revision. Where proposals are brought forward for Community Asset Transfer, these will require individual assessments to ascertain any equality impacts.

8. Sustainability implications

- 8.1 There are no sustainability implications as a result of this policy, which is essentially about protecting assets for future community use.

9 Appendices

- Appendix A: Property Disposal and Transfer Policy – Revised Version

10. Background papers

- Corporate Asset Management Plan 2017-2020
<https://www.lewes-eastbourne.gov.uk/resources/assets/inline/full/0/259505.pdf>

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Lewes District Council



Working in partnership with **Eastbourne Homes**

Document name:	Property Disposal and Transfer Policy
Document type:	Policy to support the Corporate Asset Management Plan
Authority(ies) covered:	Aligned
Responsible (Executive Lead):	Ian Fitzpatrick Director of Regeneration & Planning
Accountable (Operational Lead):	Mark Langridge-Kemp Head of Property, Delivery and Compliance
Version (e.g. first draft, final report):	DRAFT - Revised 2019 : now includes reference to Community Asset Transfer and Devolution
Approved by:	Revised policy to be considered by Cabinets 2019
Date of publication:	
Revision due:	12 months from publication
Final Equality and Fairness Analysis (EaFA) report approved by:	The Councils' Equality Groups
Date final EaFA report approved:	Analysis of original policy completed as part of adoption of the Corporate Asset Management Plan 2017-2020 final approval 9 August 2017.

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Property Disposal and Transfer Policy

Introduction

This strategy applies to the disposal or transfer of all interests in any non-residential property by Lewes District Council (LDC) or Eastbourne Borough Council (EBC), 'the Councils'. It sets out procedures that are open, transparent and consistent, to ensure maximum benefit from disposal of the Councils' assets. Within this framework the policy will ensure the Councils achieve best value, act within the appropriate legal framework, and perform in a demonstrably fair and open manner.

Whilst this strategy outlines the guiding principles and procedures around disposals, it does not bind either Council to a particular course of action. As such, alternative methods of disposal or transfer, not specifically mentioned in this policy, may be used where appropriate, subject to the relevant approval.

Commercial Business, Property and Development (CBPD)

CBPD will lead on all commercial property disposals on behalf of LDC and EBC.

The service will:

- Work within the guidelines of the Property Disposal and Transfer Strategy and relevant delegated authority at all times;
- Seek disposal opportunities that will further the corporate aims and objectives of LDC and EBC;
- Ensure the local property market and relevant external influences are monitored for market risk;
- Use accurate building performance information to feed into the Asset Challenge process and identification of surplus properties outside of Asset Challenge;
- Hold an accurate and up to date record of surplus properties and expected capital receipts;
- Dispose of properties no longer required as efficiently as possible;
- Dispose of the least efficient properties taking into account service needs, community, social, cultural, economic and environmental benefits and risks;
- Work strategically with partners to review opportunities to enhance disposal receipts, learn from our common experience and share best practice;

- Work strategically with partners to reduce our Carbon Footprint through identifying the least efficient properties and ensuring disposal properties are compliant with all existing and future energy requirements.

Identifying Property for Disposal

Usually property will only be disposed of where it has been identified as surplus to requirements or suitable for CAT, having first been through the Asset Challenge process. In some circumstances, properties may be identified for disposal in advance of Asset Challenge where they are underperforming or there is a strategic importance, or where a community organisation involved with the asset has registered an interest in a CAT.

Parks and open spaces relevant for possible devolution to Town and Parish Councils have already been identified by LDC, however, additional sites may come forward. Devolution of this land is guided via the Devolution Committee which makes recommendations and progress reports on devolution to Cabinet.

Definition of surplus assets for disposal

A property may be determined as surplus for disposal following a property review and option appraisal if some or all of the following criteria apply:

- Where there is a clear business case that an alternative organisation is better placed to own/manage the asset in order to maximise positive benefits for local communities;
- It does not meet the aspirations or key aims of the Corporate Asset Management Plan;
- It does not have combined social, cultural, environmental and economic benefits;
- It makes no contribution to the delivery of the Councils services and is unlikely to be required for service delivery in the future;
- It is no longer appropriate for service provision;
- It has no potential for future strategic or regeneration/ redevelopment purposes (including affordable housing);
- The net income generated from the site is below that which could be achieved from disposing of the site and investing the capital receipt/proceeds;
- The land or property is not adjacent to a larger area of land or property in the ownership of the Council where a strategic reason may apply for retaining the asset.

Disposal of surplus assets by freehold or leasehold disposal

The Councils should plan to dispose of all surplus land or property identified for disposal within its portfolio subject to the following criteria:

- That the disposal does not have a negative impact on the Council Medium Term Financial Plan (MTFP);
- Terms to be approved by an independent valuer where appropriate;
- Best financial consideration to be obtained unless social, environmental or economic benefits are evidenced;
- The method of disposal determined on a case by case basis;
- Any long leasehold disposal transfers all liabilities to the tenant;
- Prior to final disposal, short term intermediate use should be considered where possible to ensure that disposal can be progressed when viable.

Methods of Transfer

The Councils may consider one of the following options for the transfer of an interest in land:

Freehold Disposal

This is the complete transfer of all rights and responsibilities of continuing to hold that property. The transfer may be subject to certain claw back or overage restrictions that seek to secure further payments in the event of excess development profits (see Due Diligence section for further information).

Leasehold Disposal

The grant of a long lease (usually over 99 years), where the Councils wish to retain control of a surplus asset, or where the income stream is assessed to be of greater value than the foregone capital receipt that may be achieved through its sale, or where the Councils decide to receive a premium for a long leasehold interest and reduced revenue return for strategic purposes.

Community Asset Transfer (CAT)

The role of local authorities is changing, partly in response to the current financial climate, but also the recognition that local authorities are not always best placed to deliver community services or own community buildings. The Councils have a desire to ensure that community assets are owned, managed and run in a way that best meets the needs of the communities they serve and provides the best future prospects for that asset, where a future is viable and desirable.

CAT is the transfer of management and/or ownership of property to an organisation where there is an identified social, economic or environmental benefit; sometimes, but not exclusively, the transfer may be at undervalue justified by that benefit – this could be via a freehold/leasehold disposal, short lease or licence.

Community-based organisations can sometimes be better placed than local authorities at securing investment through sources such as the National Lottery, crowdfunding, sponsorship and legacies. Having control over their assets can enable these organisations to become more self-sufficient, secure and sustainable whilst also ensuring the long-term community benefit of assets. Consideration of CAT might be appropriate in instances involving community and voluntary groups, Development Trusts, Community Interest Companies or Town/Parish Councils (where this is related to buildings rather than parks and open spaces).

Devolution of Parks and Open Spaces

In LDC, where there are Town and Parish Councils, a process of devolution is taking place to transfer the ownership and responsibilities for relevant parks and open spaces to Town or Parish Councils.

Financial criteria for disposals

An option appraisal should be carried out which assesses the capital and revenue implications of each option, including the impact of the current economic and the VAT implications. Valuations should be obtained for all viable options, provided by an independent valuer.

Once sites are approved as being suitable for disposal and a programme for disposal has been agreed, this should be included on a disposal plan which is then used to inform the MTFP/Asset Register. However, until exchange/completion of contracts has taken place, or the lease has been completed, there will always be a risk that the disposal will not take place in the time periods programmed.

Valuations for disposal for inclusion in Asset Register

The Finance Team must be provided with copies of valuation documents and details of the following values when a property is disposed of by freehold sale:

- Unrestricted value
- Restricted value (if relevant)
- Actual disposal value

Due Diligence

Due diligence will be carried out prior to consideration of a disposal, to include consideration of:

- Best consideration;
- Existing lease arrangements regarding the property (to include minimum length of the unexpired lease terms, covenant strengths, legal encumbrances, 3rd party rights);
- Asset maintenance liability and building condition true lifecycle costs;
- Future planning, and/or regeneration potential and impacts on enhanced disposal receipts;
- Community, social, cultural, economic and environmental benefits and risks;
- Crichel Down Rules, State Aid, and Contract Procedure Rules;
- Potential for including restrictive covenants and overage clauses;
- In addition, for property taken through the CAT process, future management and use of the property and the relevant organisation's skills, governance and financial arrangements.

Best consideration and advertising disposal – section 123 Local Government Act 1972

Local Authorities have an overriding duty under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of property, subject to certain exceptions set out in the Local Government Act 1972: General Disposal Consent 2003. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State where the disposal:

- will help the Council to secure the promotion of the improvement of the economic, or environmental well-being of its area; and
- where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 or less.

The Councils must still comply with their duty to obtain best consideration for the restricted value and comply with normal and prudent commercial practices, including obtaining the view from a professionally qualified and independent Chartered Surveyor.

There are further procedural requirements to be complied with on disposal of open space land. A local authority is required to advertise its "intention" in a local newspaper for two consecutive weeks and to consider objections. The advertising process should be undertaken before any final decision is made on the disposal so that proper consideration is given to the responses that are received.

Crichel Down Rules

The Rules apply in certain circumstances where land that is to be disposed of was previously acquired by or under threat of compulsion. Where the Rules apply, former owners will, as a general rule, be given a first opportunity to re-purchase the land previously in their ownership.

State aid

In disposing of any land or interest in land the Council must ensure that it does so in accordance with State aid rules. There is an automatic assumption that no State aid is present in a sale for "market value" through (i) an open and unconditional bidding process or (ii) an expert valuation. If the automatic assumption does not apply it will be necessary to look at other aspects of the proposal, including whether the disposal falls outside of the State aid regime because it does not fulfil all of the State aid tests.

Contract Procedure Rules

Subject to certain exceptions, the Council's Contract Procedure Rules say that no freehold sale of land, where the value exceeds £50,000, shall be made, except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

Restrictive covenants and overage

Consideration may be given to:

- Imposing restrictive covenants in freehold transfers limiting the future use of the properties.
- Including overage clauses in freehold transfers enabling the Councils to share in any future increase in value in the properties realised after the properties have been sold. This would enable the Councils to share in any uplift in value if planning permission is granted to develop the properties for something much more valuable, e.g. residential use. The precise terms of the overage, including the percentage share and duration of the overage rights, would have to be settled after taking professional advice.

An Equality and Fairness Impact Assessment will be undertaken for each disposal, or where relevant, group of property disposals to assess community, social, cultural, economic and environmental benefits and risks.

CBPD will enter into detailed discussions on behalf of the Councils only when Cabinet has agreed to a proposal or there is agreement through the relevant delegated authority.

Types of transfer

There are a number of ways in which a property can be transferred including, but not limited to:

Private Sale/Transfer: Sale/transfer of property negotiated with one or a small number of purchasers/community organisations. A binding legal agreement is created on 'exchange of contracts' between the Councils and the purchaser/transferee.

Public Auction: Sale of property by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.

Informal Negotiated Tender: Sale of property after a public advertisement that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.

Formal Tender: Sale of property by a process of public advertisement and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the Council.

Exchange of Property: A transaction involving the exchange of Council owned property with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to the property exchanged or there can be an equality payment made by either party.

A freehold or leasehold transfer may be considered appropriate, depending on the circumstances.

Decision Making

LDC and EBC retain sovereignty over their respective property assets. Overall authority for agreeing disposals will generally sit with the relevant Cabinet, but officers will normally have first consulted LDC/EBC Strategic Property Board.

The following procedures relate to the disposal of land:-

- Approvals for declaring land surplus to the Council's requirements, and authorising its disposal will be obtained in accordance with procedures set out in Councils Constitutions;

- Local Members are consulted on all property disposals at an early stage including when the land is in the process of being declared surplus. It is recognised that local members, because of their local knowledge of the district that they represent, will be able to contribute to the discussion as to the value or otherwise of continued retention of the asset and also provide valuable market intelligence such as potential special purchasers. Therefore engagement should be sought and encouraged at an early stage of the disposal process.
- Where delegated by Cabinet, the final decision to dispose of a property and at what terms will be at the discretion of the relevant Lead Member as advised by the Director of Regeneration and Planning in accordance with the scheme of delegation.
- Where delegated by Cabinet, decisions to approve the terms of any disposal of land are made by either the Director of Regeneration and Planning in conjunction with the relevant Lead Member or on some major projects, the Director of Regeneration and Planning alone.
- Where a property has been previously acquired through or under the threat of compulsory purchase means and is now surplus to Council requirements, consideration of the Crichel Down rules may apply.

Copy for information