

## Service Devolution & Asset Transfer to Towns & Parishes

### Briefing Note No. 373

**Service :** *Service Devolution and Asset Transfer Programme*

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The Service Devolution and Asset Transfer Programme (SD&AT) is progressing, with funding being invested into staff resources to ensure the delivery of packages across the county. There are several policies in place and the purpose of each is clarified below.

- **Community Asset Transfer Policy** – Approved July 2011 – this details the approach for community groups to apply for land and property owned by the Wiltshire Council (the council). Area Boards are delegated to make the decision up to a value of £250k, assuming they are not defined as a “strategic” asset i.e: needed for a Council project.
- **Cabinet decision to close public conveniences** – Approved March 2016 – gave authority for either freehold or leasehold interests to be transferred to town/parish Councils
- **Single member decision for disposal of play areas (only)** – Approved March 2017 – ability for the council to grant seven-year leases to town & parish Councils, to bridge gap until that town/parish is subject to the wider SD&AT Policy (see below), when either a 125 year lease or the freehold can be transferred
- **Service Devolution & Asset Transfer (SD&AT) Policy** – approved November 2017 – this provides the framework for larger scale service and asset transfers to town and parish councils. It specifically excludes the ability for applications based on services in isolation – section 3.4.3 (for example play areas). All packages must be approved at cabinet, in accordance with the wording in the policy. A programme of devolutions is being drafted at present.
- **Service Devolution & Asset Transfer Policy – Small Parishes** – proposed for November 2018 – gives overall authority for service-based assets to be freehold transferred to smaller towns and parishes, based on key criteria, as part of the SD&AT programme.

#### Types of transfer

##### **Seven year leases**

These are used for various reasons.:

- A lease of less than seven years falls outside the statutory requirement to obtain best consideration for the “disposal.” Thus, leases can proceed without having to justify the social value in each individual case.
- A lease of less than seven years does not need to be registered with the Land Registry, meaning the document is simplified and there are no costs to the town or parish council to register it.
- The lease allows for the service-based asset to be transferred while the wider SD&AT negotiations and documentation proceed. This enables a quick start to the process. In nearly all cases these will become either a freehold transfer or 125-year lease as soon as possible as part of the broader SD&AT package negotiation.
- The lease will be on full repairing terms with the land/building transferred in its current condition.
- The lease will contain a break clause where the council has retained wider land that is not subject to the lease. This is usually where the council owns land beyond the service-based asset being transferred by way of a lease, e.g. recreation fields adjacent to play areas.)

### **125 year leases**

This lease will be used where not all the council’s freehold interest is being transferred. For example, a public convenience within a wider retained car park; or a play area within a much wider area of open space.

- The lease will be on full repairing terms with the land/building transferred in its current condition.
- The lease will contain a break clause where the council has retained wider land that is not subject to the lease. This is usually where retained land is adjacent to the service-based asset being transferred by way of a lease (e.g. public conveniences within retained car parks; or recreation fields adjacent to play areas)

### **Freehold transfers**

The usual basis for freehold transfers is as follows:

- a) To include a provision whereby should town and parish councils dispose of those assets for non-community uses, 50% of the capital receipt is payable to the council.
- b) In the case of community buildings and land, the permitted community use will be defined in the transfer document (or lease).
- c) The transfer will **not normally** include a provision to offer the asset back to Wiltshire Council if it is no longer needed for community use (“the reverter”) unless there are compelling legal reasons for doing so.
- d) If the transfer does need to contain the reverter in the circumstances referred to above, the council will not be under any obligation to accept the asset back. However, the council will assess at the time the wider issues that may result in the council taking the land back.

It should be noted that if the town or parish council has proposals to develop their community facilities, and to provide the funding any of the assets transferred need to be sold for alternate uses, an approach can be made to the council to relax the obligation to pay the 50% share. Each case will be considered individually, giving consideration of the wider plans for that community. E.g the proceeds from the sale of a transferred asset being used to redevelop another community use asset within the town/parish boundary.

### **Service Delegation only**

In some cases, a freehold transfer of the asset to town and parish councils may not be acceptable to the council due to, inter alia:

- Adjoining / surrounding land not being transferred
- Potential for redevelopment, either with or without the council land
- Historic and/or complex land issues which would make a freehold transfer resource prohibitive to both the council and the town or parish council.

In these cases the town or parish council will take on the maintenance liability under a service devolution but not the freehold title.

If there are a large number of small open space land parcels these can often most efficiently and effectively be managed via a service delegation agreement. Should the town or parish council wish to have these legally transferred it will be the responsibility of that town or parish council to undertake all the required due diligence and fund all legal costs.

Prior to any negotiations, the council advises town or parish councils to read the [Service Devolution and Asset Transfer Policy](#) and it is recommended that a solicitor is engaged to assist with the legal process of transfers.

### **Typical list of assets and services transferred**

- Public conveniences – except where part of a wider holding (see paragraph 12)
- Play areas
- Cemeteries
- Allotments
- Recreation fields in small parishes only
- Street nameplate maintenance

### **Services not being transferred**

Any service for which the council carries statutory responsibility CANNOT be transferred.

For example waste collection services remain the responsibility of the council and will not be transferred town/parish councils