



TOURISM, COMMUNITIES, CULTURE & LEISURE COMMITTEE

Thursday, 9 March 2023

REPORT TITLE:	COMMUNITY ASSET TRANSFER FORMER LIBRARIES
REPORT OF:	DIRECTOR OF RESOURCES

REPORT SUMMARY

This report makes recommendations in relation to the following community asset transfer (CAT) matters.

Former Libraries at Irby Village and Wallasey Village.

It builds upon the CAT reports approved by this committee at its meetings on 16 June 2022, 25 October 2022 and 2 February 2023.

A report on Woodchurch Leisure Centre, the former library at Higher Bebington and Brackenwood Golf Course will be brought to this committee in June 2023.

This report meets the following priorities in the Wirral Plan 2021-26

- Safe, vibrant communities where people want to live and raise their families.
- A prosperous inclusive economy where local people can get good jobs and achieve their aspirations.

This matter has the potential to affect all wards.

This is a Key Decision

The Heads of Terms referred to in this report were submitted confidentially for commercial reasons. Therefore, Appendices 1, and 2 of this report are exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

RECOMMENDATION/S

The Tourism, Communities, Culture and Leisure Committee is recommended to:

- (1) Increase the capital allocation to support the transfer of Irby library from £20,000 to £40,000

- (2) Authorise the Director of Resources to conclude the transfer of the assets of Wallasey Village Library to the Wallasey Village Library and Community Centre, and Irby Library to the Friends of Irby Library based on the agreed terms reported in the exempt appendices 1 and 2 of this report;

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The recommendations within this report enable Committee to make decisions on the assets that are in scope for Community Asset Transfer (CAT).
- 1.2 The report makes recommendations for transfer where the information supports that approach.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The CAT process has been a primary consideration for this report which follows on from resolutions agreed by this Committee at its meeting of 16 June 2022, 25 October 2022 and 2 February 2023.

3.0 BACKGROUND INFORMATION

Former Libraries

- 3.1 Following the recommendation of this Committee at its meeting on 2 February 2023, Heads of Terms have now been agreed for the transfer of the former libraries at Wallasey Village, and Irby. These Heads of Terms are contained in the exempt appendices 1 and 2 of this report.
- 3.2 In relation to the transfer of Irby library, further works have been identified which need to be done by the Council prior to the transfer of the asset. These relate to the heating system and insulation of the building. The estimated cost is £20,000. It is therefore recommended that the capital sum to support the transfer is increased from £20,000 to £40,000 to cover the cost of the additional works. There is surplus budget in the approved funding for CAT to fund this increase.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The following table sets out the capital value of each asset

ASSET	Estimated Asset Value	Estimated Capital Investment Costs
Irby Library	£400,000	£95,475
Wallasey Village Library	£400,000	£160,250

- 4.2 This table provides information on the estimated value of each asset in this report.
- 4.3 The estimated capital investment cost come from previous surveys which have been updated. Such investment is required over several years. It is given for information purposes.

Indicative Funding Table for the former libraries				
Area	Capital - Condition	Capital - Change of Use	Total Capital	Revenue
Irby	40,000	0	40,000	20,000
Wallasey Village	53,500	24,000	77,500	22,000

4.4 Any transfers will be on a full repairing and insuring lease ensuring there are no future costs for the Council. Leases will be monitored on an annual basis to ensure that repairs and maintenance are being undertaken. Evidence will be required that the asset is being insured.

5.0 LEGAL IMPLICATIONS

- 5.1 The terms of reference for the Tourism, Communities, Culture and Leisure Committee are to consider applications for transfers of assets to organisations that will provide community benefits e.g. main uses which would further the social well-being and interests of the local community. Examples would include cultural, recreational, and sporting uses. Outside the definition would be use that was predominantly educational. Any appropriation of land from use as a library to educational use would require the approval of Policy and Resources Committee. The Tourism, Communities, Culture and Leisure Committee should refer to Policy and Resources Committee surplus assets for which the Committee saw no alternative community use.
- 5.2 In general the Committee in reaching a decision must consider all relevant considerations and disregard irrelevant considerations and come to a reasonable conclusion. That would include considering any potential uses for the assets which are alternative to those being proposed by the applicants for CAT transfers. Not to consider alternative uses would expose any decision to legal challenge.
- 5.3 A relevant consideration is the Council's fiduciary duty to the Council Taxpayer to take account of their interests in maximising income or savings and obtaining the best price reasonably obtainable for the disposal of any asset. The Committee should therefore take into account any income or capital receipt forgone as a result of donating an asset for community use. Any financial loss would have to be clearly outweighed by the strength of the community benefits. The Council's current financial position is a relevant factor.
- 5.4 If the community benefits are unlikely to be realised by a CAT transfer because, for example, of a lack of financial viability or necessary expertise, then they should be given little or no weight in the decision-making process, particularly if the CAT transfer would commit the Council to capital or revenue support which would be wasted if the community benefits were not realised.
- 5.5 The Council is under an additional duty to obtain the best price reasonably obtainable for the disposal of any interest in its land unless the disposal is for a lease for less than seven years. If the proposed lease is for a longer term, then a less than market rent would be lawful if the value of the community benefits outweighed any

loss of income. If, however, the value of the land free of any restrictions imposed by the Council would be £2million or more, then the Secretary of State's consent would be required.

- 5.6 A further consideration is the Subsidy Control Act 2022 which prohibits subsidies by public bodies to an enterprise (even if not for profit) that offers goods or services on a market. If the financial assistance (e.g. charging a below market rent in a lease) conferred an economic advantage on the selected enterprise that might distort competition with other providers, it would be unlawful unless the advantage were below the "de minimis" level of £315,000 (measured over the length of the proposed lease) or the rigorous requirements for a lawful subsidy under the Act were satisfied.
- 5.7 Any proposed disposal by the Council of an interest in land that is public open space (i.e. land held for the purpose of public recreation such as public parks or golf courses that are open to the public and not restricted to a private membership) must be advertised in local newspapers for two successive weeks. Any objections received would have to be considered by the Committee before any decision were made on the disposal.
- 5.8 The grant of a lease to a CAT transferee would confer exclusive possession of the land to the organisation. The Council could impose covenants on the lessee e.g. to keep the property in good repair or not to use it for any purposes other than those specified. Those covenants would be enforceable but any decision by the Council to forfeit the lease for non-compliance could be overturned by the Court in its discretion if the lessee sought relief from forfeiture. The Council would in effect lose control of the land for the duration of the lease (and the lessee would have the right to a renewal of the lease on its expiry unless its right were excluded pursuant to the Landlord and Tenant Act 1954).
- 5.9 Any disposal of the land for a different use than the one formerly established by the Council would have to be compliant with any legally enforceable covenants imposed by previous owners or current landlords and with any requirements for planning permission.
- 5.10 If the Committee were to agree in principle to a CAT transfer, Asset Management would negotiate heads of terms with the transferee. Those terms would then be referred to the Tourism Committee for approval and to Policy and Resources Committee if the value of the land exceeded £500,000) whereupon the legal documentation and processes would be undertaken. Any capital works by the Council would have to be completed prior to the grant of the lease. Pending completion of the CAT transfer, any costs incurred in maintaining the asset would have to be met by the Council.
- 5.11 If the Committee decided not to proceed with a CAT transfer, the property would either be considered for an alternative use by the Council or put on the market for sale or rent in accordance with the Council's Asset Disposal Strategy.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 The Council has existing resources in place to progress the recommendations set out in this report.

7.0 RELEVANT RISKS

7.1 Transferring any asset carries a risk that it may not be successful. To reduce this risk, the Council has undertaken a very thorough process in terms of assessing each business plan, the funding required and considering all other relevant factors as detailed in this report.

7.2 In addition, under the CAT proposals the Council would be leasing the assets to the relevant organisation and if any transfer failed the asset would return to the Council but only after possible litigation and the Court or the lessee agreeing to the forfeiture of the Lease. Consideration could then be given to the options. Most of the assets have a prospect of an alternative use, so the Council could market the sites to realise a rent or capital receipt after any court process has been completed.

7.3 A communications strategy is in place to manage any reputational risks associated with the CAT project.

7.4 Any post transfer risks (e.g. ensuring compliance with the lease, maintaining the property etc) will be dealt with by lease provisions and regular annual monitoring of these matters.

7.5 A register of all assets transferred will be kept by the Asset Management Team. The annual report to members on the Asset Strategy 2022-27 will report progress on CAT.

8.0 ENGAGEMENT/CONSULTATION

8.1 Engagement has taken place with each of the organisations as they prepared their business plans. Following the assessment process, further engagement took place with each group to provide feedback and to discuss the issues and options as set out in this report. Each organisation has been advised of the officer recommendation prior to the publication of this report.

8.2 Following the decision of this Committee, the outcome will be discussed further with each organisation as appropriate.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2 As part of the due diligence the Council has checked that each of the organisations recommended to receive a transfer of the asset has all the relevant policies in place or will have them in place prior to any Transfer Agreement being signed.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 The assets referred to in this report are existing and vary in age and construction. In considering the business plans consideration was given to reduce carbon emissions and securing environmental improvements where this was possible, Discussions have taken place about the possibilities and benefits of carbon reduction from building retrofit and low carbon heating systems.
- 10.2 The Council has provided energy certificates and Energy Performance Certificates as we are obliged to do when leasing a property. These detail potential interventions to reduce energy consumption.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 Transferring the library assets has several community benefits. A number of new organisations will be formed to run the assets, and this will provide new opportunities within those communities for community wealth building. The local focus of activity within those communities will complement existing facilities and create new economic opportunities for local groups.

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APPENDICES

- Appendix 1 Heads of Terms former Wallasey Village Library (Exempt)
Appendix 2 Heads of Terms former Irby Library (Exempt)

Appendices 1 and 2 of this report are exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

BACKGROUND PAPERS

1. Community Asset Transfer Policy 2022

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Tourism Communities Culture and Tourism Committee Report on CAT (stage 1)	16 June 2022
Report on CAT	25 October 2022
Report on CAT	2 February 2023