

**POLICY AND RESOURCES COMMITTEE****WEDNESDAY, 12 JULY 2023**

<b>REPORT TITLE:</b>	<b>COMMUNITY ASSET TRANSFER WOODCHURCH LEISURE CENTRE</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF FINANCE</b>

**REPORT SUMMARY**

The Tourism, Communities, Culture and Leisure Committee at its meeting on 22 June 2023, resolved that the Director of Finance should bring a report on the community asset transfer of Woodchurch Leisure Centre to Policy and Resources Committee, on 12 July 2023, for decision.

After the committee meeting and following discussions with both interested parties, Helen Diamond Swimming Limited withdrew their proposal due to their commitment to another venue and other projects.

This report reviews the business plan and recommends a transfer to Woodchurch Wellbeing, although notes that this carries some significant risks due to the underlying condition of the building and volatility around energy prices.

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 Business Plan referred to in this report were submitted confidentially, for commercial reasons. Therefore, Appendix 1 of this report is exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

**RECOMMENDATION/S**

The Policy and Resources Committee is recommended to authorise the Director of Finance to

(1) transfer Woodchurch Leisure Centre to Woodchurch Wellbeing, subject to them achieving additional grant funding, on the basis that it provides the most cost-effective

option for the Council whilst continuing to provide an asset that will benefit the community in an area where there is an identified deficiency in provision.

(2) to negotiate and agree Heads of Terms for the transfer, with a target date for completion and transfer of October 2023.

(3) make available a maximum capital grant of £330,000 by way of a grant agreement with Woodchurch Wellbeing to support the transfer and

(4) provide business planning support to Woodchurch Wellbeing to ensure that the risks identified in the business plan are minimised.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 To enable a decision to be made on the community asset transfer of Woodchurch Leisure Centre.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 The alternative option to asset transfer is the demolition of the asset followed by a repurposing of the site for another use to support Local Plan priorities. This could be playing pitches for various sports and Biodiversity Net Gain. This would support the Local Plan which has identified a deficit of playing pitches that needs to be addressed.
- 2.2 The costs of undertaking the demolition of the leisure centre were originally estimated to be £330k – consistent with the amount that could otherwise be offered as a grant for Community Asset Transfer.
- 2.3 The costs of demolition have not yet been determined through a formal procurement process as the costs associated with the design required would be significant and would represent abortive costs if the transfer was to go ahead.
- 2.4 Given the significant increases in inflation that have been experienced over the past year, it is highly likely that the costs of demolition will have increased beyond that originally projected.
- 2.5 It is anticipated that it would take six months from the time of the decision to procure a contractor and for them to start on site. Holding costs for the site will continue to be incurred for this period, it is estimated that total holding costs of £185k would be incurred for 23/24 for this option.

### **3.0 BACKGROUND INFORMATION**

- 3.1 Woodchurch Leisure Centre was closed during Covid and then permanently closed as part of the 2022/23 Budget process due to very high operational costs and deficits. Members decided to put this asset into the community asset transfer process.
- 3.2 Following an expression of interest process, two submissions were received, and Members agreed that both should progress to the detailed business planning stage. These organisations are Helen Diamond Swimming Limited and Woodchurch Well-being.
- 3.3 The Tourism, Communities, Culture and Leisure Committee, at its meeting on 22 June 2023, resolved that “the consideration of the future of Woodchurch leisure Centre had been on-going for quite some time and now requires urgent consideration and determination. To that end, the business case is to be referred to the Director of Finance for his immediate attention, following which, a report is to be

brought to the meeting of Policy and Resources Committee on 12 July for determination, ensuring that members are acquainted with all key facts.”

- 3.4 Meetings took place with Helen Diamond Swimming Limited and Woodchurch Wellbeing in the week commencing 26<sup>th</sup> June 2023. Helen Diamond Swimming Limited withdrew their interest on the 4<sup>th</sup> July 2023 because of a commitment they have taken on with another venue and other projects.

## **REVIEW OF THE BUSINESS PLANS AND CONSIDERATIONS**

- 3.5 Swimming pool provision within the Borough is at a premium. All the existing facilities, in the public and private sector, are over-subscribed with demand outstripping supply. Swimming lessons are expensive and not affordable for everyone, yet living on a Peninsular, surrounded by water on three sides creates an imperative for as many as possible to be able to swim. If this transfer can offer affordable, or subsidised swimming opportunities for those who cannot afford them, for example in the summer holidays, then this would be a benefit, particularly to the Woodchurch community.
- 3.6 The recommendation to transfer to Woodchurch Wellbeing is based on the business plan assumptions and the explanations around key concerns that have been provided by both groups. Woodchurch Wellbeing consists of several organisations that have been involved in previous asset transfers. The most recent of these was the former Bryne Avenue Baths in Rock Ferry.
- 3.7 The key and overriding concerns in relation to the asset in general and the asset transfer bid revolve around the ability to manage repairs and maintenance costs and assumptions around energy costs.
- 3.8 The repairs and maintenance issues are significant given the age and condition of the building. There are several issues which need to be addressed, some of which will be rectified using the grant that is to be provided.
- 3.9 The Woodchurch Wellbeing bid assumes that the grant received from the Council will be used as match funding to attract additional grants, such as the Community Ownership Fund, from other organisations. This is not considered unreasonable, although it creates a further element of risk and means that it may take five years to fully reopen the centre as work would have to be done on a phased basis subject to the funding secured.
- 3.10 Concerns remain as to how a catastrophic failure of equipment, such as the boiler plant, which is approaching the end of its life, could be managed in the short term. There are ambitions in the longer term to remove the reliance on this plant or renew it, but it will remain a risk to the business for several years.
- 3.11 The second element of concern is in relation to energy costs. The current forecast for energy costs is a continued reduction over time away from the significant peaks that have been seen over the past two years. This will however remain uncertain given the geopolitical situation and the ongoing instability within the market.

- 3.12 The overall cost effectiveness of the remaining proposal is ultimately dependent on the length of time that the company could operate the centre successfully. A period of 5 years, for example, would result in a comparatively small investment by the Council, in comparison to other in-house leisure facilities, for the provision of swimming pool facilities within this area of the Borough.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 The costs of transfer are limited to the proposed capital grant of £330k and the holding costs of the site until the point at which the asset can be transferred. Woodchurch Wellbeing have indicated they would be seeking the transfer within the next 3 months. This will incur estimated revenue costs of c.£110k in 23/24.
- 4.2 The total costs will therefore be £440k.
- 4.3 The asset will be transferred for a period of 20 to 25 years on a full repairing and insuring lease. Following transfer of the asset, the Council will have no responsibilities for the operation of the facilities or any costs for the period of the lease.

#### **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 consider any income or capital receipt forgone because 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 team would negotiate heads of terms with the transferee. Those terms would then be referred to the Tourism, Communities, Culture and Leisure 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. The asset is within the Green Belt and therefore any future use would have to comply with this planning policy.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

6.1 This transfer can be completed using existing resources.

## **7.0 RELEVANT RISKS**

7.1 The main risk with the transfer of the asset is that it is not successful, and that the asset is subsequently returned to the Council. There is the potential for this to happen if further funding streams cannot be identified by the group to undertake the necessary works to reopen the centre. The worst-case scenario is that this takes place shortly after the centre reopens and the capital grant has already been spent.

7.2 To reduce the risk of this, the business plan has been reviewed and it is proposed that the Council provides business planning support to the organisation to enable them to mitigate the risks around their business plan.

7.3 It is highly likely that if the asset is returned to the Council, then demolition will remain the only other viable option. The costs of undertaking this demolition will then be in addition to additional holding costs for a period of 6 months while the procurement process is undertaken. The Council will therefore have spent £440k for no return. To mitigate this risk, the steps explained in paragraph 8.2 above are recommended to be taken.

## **8.0 ENGAGEMENT/CONSULTATION**

8.1 The Council has actively engaged with both organisations during the preparation of their business plans and the clarification stages following submission of those plans. Meetings were held with both parties following the Tourism, Communities, Culture and leisure Committee on 22 June 2023.

## **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.

10.2 Both organisations have the relevant policies and processes in place to address Equality Implications.

## **11.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 11.1 Woodchurch Leisure Centre was built and opened in the 1960's. It used construction methods relevant at the time, but today, these do not provide the most efficient or effective approach to energy efficiency, and the environment.
- 11.2 However, any energy efficiency or environmental measures undertaken can only go so far, as it is very difficult to retrofit a building of this age, condition and size.

**12.0 COMMUNITY WEALTH IMPLICATIONS**

- 12.1 Supporting local businesses brings benefits to the local economy.

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**APPENDICES**

Appendix 1 Woodchurch Wellbeing proposal (Exempt)

Appendices 1 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**

Community Asset Transfer Policy 2022

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Tourism, Communities, Culture and Leisure Committee</b>	<b>22 June 2022</b>