

CHILDREN, YOUNG PEOPLE AND EDUCATION COMMITTEE**Wednesday, 19 July 2023**

REPORT TITLE:	COMMUNITY ASSET TRANSFER FORMER LIBRARY, HIGHER BEBINGTON
REPORT OF:	DIRECTOR OF FINANCE

REPORT SUMMARY

This report seeks approval of the Heads of Terms to transfer this asset to the COOP Academy (Bebington) for education.

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 appendices 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

Children, Young People and Education Committee is recommended to transfer the former Higher Bebington library to the COOP Academy (Bebington) on the Heads of Terms in Appendix 1 of this report, subject to the consent of Unilever.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To enable the Council to progress an asset transfer of this former library for education and community benefits.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The options considered, in addition to the transfer, were (1) the demolition of the building and use for one residential dwelling. This was not chosen as it would not realise the education and community benefits set out in this report and would be contrary to the terms of a covenant with Unilever (2) demolition of the building and inclusion in the park. This was not chosen because the education and community benefits set out in this report were considered to outweigh the environmental benefits of returning the site to its original purpose of a public park in accordance with the terms of the covenant with Unilever which was imposed when the Council acquired the land from the Leverhulme Estate.

3.0 BACKGROUND INFORMATION

- 3.1 As part of the 2022/23 Budget process, following public consultation, the Council decided on its future library offer to meet statutory requirements. This led to the decision to close several libraries, one of which was Higher Bebington. The library closed on 31 October 2022.
- 3.2 Members agreed to put the library assets that were to close into a community asset transfer (CAT) process. Expressions of interest were invited and the Tourism, Communities, Culture and Leisure Committee at its meeting on 2 February 2022 agreed, based on a viable business plan submitted by the COOP Academy (Bebington) to transfer the asset to them and recommended to Policy and Resources Committee that this asset was appropriated by the Council for education purposes. This was agreed at the Policy and Resources Committee in March 2023.
- 3.3 Heads of Terms have now been negotiated with the COOP Academy (Bebington) and these are in the exempt appendix 1 of this report. The COOP Academy are funding the capital works required at their own cost in the sum of £79,000 and in agreeing the business plan, the Tourism, Communities, Culture and Leisure Committee agreed a revenue sum of £60,000 to support the transfer from the CAT budget.
- 3.4 This matter is now coming to this Committee, because of the appropriation agreed by Policy and Resources in March 2023, which means that all future decisions regarding this transfer have become the responsibility of this committee.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The following table sets out the capital value and market rent for the asset as advised by the Council's consultants, Avison Young.

ASSET	Asset Value	Maintenance Cost
Higher Bebington Library	Nominal value given the condition of the building	Not yet assessed

4.2 The COOP Academy (Bebington) are funding the capital works, identified in their business plan at their own cost.

4.3 The CAT budget is funding £60,000 of revenue costs to support the business plan.

5.0 LEGAL IMPLICATIONS

5.1 The terms of reference for the Children, Young People and Education Committee include, amongst other matters, the education of young people and working with all schools including Academies to improve educational attainments.

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 that being proposed by the COOP Academy (Bebington). 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 its 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 transferring an asset for educational use. Any financial loss e.g the payment of a grant or the loss of a market rent would have to be clearly outweighed by the strength of the educational benefits. The Council's current financial position is a relevant factor.

5.4 In this regard it is important to ensure that the terms of a community asset transfer do not significantly reduce the savings made, or increased income achieved as a result of the measures already taken by the full Council to fulfil its legal duty to balance its budget.

5.5 If the educational 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.

5.6 The Council is under an additional duty under section 123 of the Local Government Act 1972 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 economic, social or environmental benefits outweighed any loss of income.

5.7 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. The figure of £315,000 includes any previous financial assistance provided to the recipient by a public body during the past three financial years. Financial assistance would include any future discretionary business rates relief which is not given to its competitors. Academies which provide a public education are not considered to be an enterprise that offers services on a market.

- 5.8 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. Only the building would be leased to the Academy not any green open space.
- 5.9 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).
- 5.10 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. The Council is bound by a covenant with Unilever when it bought the land not to use the site for any purpose other than as a park for public recreation .Unilever gave its consent to the use of the land for a library in 1954. Its consent would be required for the change of use to a school. Planning permission for the material change of use to a school is not considered to be necessary because library and educational uses fall within the same Use Class F1.
- 5.11 If the Committee decided not to proceed with a transfer, the property would be referred back to Policy and Resources Committee to be considered for an alternative use by the Council.

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 proposal 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 for the future of the site.
- 7.3 A communications strategy is in place to manage any reputational risks associated with the 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 disposals.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Engagement has taken place with COOP Academy (Bebington) as it prepared its business plan and with ward councillors, who support this proposal.

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 It is not considered that the proposed transfer will adversely affect any section of the community having protected characteristics.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 The proposals will improve the condition of this building and support environmental and climate change objectives.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 Transferring the asset has several education and community benefits which will benefit children and young people in terms of educational attainment and community benefits for local people who will be able to access and use the facilities outside of school hours, at weekends and during holiday periods.

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APPENDICES

Appendix 1 Head of Terms with COOP Academy (Bebington) (Exempt)
Appendix 2 Business Case (Exempt)

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
Report on CAT	9 March 2023
Report on CAT	22 June 2023