Executive **6 October 2022 (postponed from 15 and 21 September 2022)**

Report of the Director of Place

Portfolios of the Executive Member for Culture, Leisure & Communities and the Executive Member for Finance and Performance

Update to the Community Asset Transfers Affecting Community and Parks Assets

Summary

1. This report presents the responses received, following publication of the Notices published in local newspaper in December 2021/January 2022, under Section 123 of the Local Government Act 1972 (indicating that the Council proposed to dispose of various areas of open space land). The report makes recommendations in reply to those representations made and seeks a decision from the Executive on those recommendations.

Recommendations

2. The Executive is asked to:

    2.1 Note the progress on the Community Asset Transfers to date.

    2.2 Note the five comments received in response to the Section 123 Notices published in respect of those properties qualifying as public open space.

    2.2 Amend the approval for the disposal of the two former herdsman's cottages at 103 Heslington Road and 159 Mount Vale to be on the basis of granting a 250 year lease for each property, which each contain a user clause restricting the use of the properties to private main/principal residences, rather than disposing of the freeholds.

    Reason: To obtain a capital receipt from the disposal (by way of grant of long lease) of both properties on the open market which

have been deemed surplus to requirements, whilst seeking to ensure that the cottages are only used as private main/principal residences, as opposed to holiday lets.

2.3 Note the assurances and further information provided in the report in respect of the three public comments received in respect of the intention to dispose through the granting of a lease at; (i) Land at Mayfield South. (ii) Rowntree Park Tennis Pavilion and (iii) Land at Chapman's Pond

Reason : To support York communities to access external funding and grants, to develop the facilities in line with local community aspirations and secure their long term sustainable care providing savings to the Council if it were to otherwise operate and manage these facilities itself.

To support the health and wellbeing of people in the local community by providing the use of council assets which can be actively managed and improved by the involvement of the local community.

Background

3. At the meeting of Council's Executive on 26th November 2020, approval was given to dispose of the freehold interests of the former herdsman's cottages on the Micklegate Stray and the Walmgate Stray. These properties had been considered surplus to operational requirements and a disposal had been considered as the preferred way forward, to realise a capital receipt, rather than retaining and managing as holiday lets, given the substantial capital outlay needed to modernise them.

4. At the meeting of the Council's Executive on 18th March 2021 approval was given to dispose, by way of granting leases, of the following;

- Land at Mayfields North
- Land at Mayfields South
- Land at Clifton Without
- Rowntree Park Tennis Pavilion
- Rowntree Park Tennis Courts
- Land at Chapmans Pond
- Poppleton Community Centre.
- Land near Rufforth

5. The Council has historically transferred assets to the community where a community group are able to use the asset for improved community or social outcomes. This process is most effective when it is developed in partnership with communities, to develop shared visions and collaborative proposals. We ensure that groups taking on the responsibility for operating assets have the support and capability to do this successfully. Each case is considered on its own merits having regard to the business case and proposals submitted in support of such. The March 2021 report outlined the plans to dispose of these assets in a similar manner, in compliance with the Community Asset Transfer Policy.

6. Pursuant to Section 123 of the Local Government Act 1972 the disposal of properties consisting of 'public open space' land (either by way of disposing of the freehold or granting a lease) requires that the intention to dispose is advertised. Any comments/objections received are then considered by the Council, prior to proceeding with the intended disposals. The intention to dispose of those properties listed above was advertised in the York Press on 16th and 23rd December 2021, specifying the closing date for responses on 13th January 2022. The former Herdsman's Cottages at 103 Heslington Road and 159 Mount Vale are properties on land which is part of a Stray, and as such, is classed as open space and covered by the Act.

7. No responses to the proposed leases were received in respect of; Poppleton Community Centre; Land at Clifton Without; Land at Mayfield North; and, Land at Rowntree Park Tennis Courts. (It was not considered necessary to publish a notice/seek comments from the public in relation to the land near Rufforth, as this land is not assessed as currently being 'public open space', because it is land not laid out as public park/garden, and has not been used by the general public for recreation).

8. The lease of Poppleton Community Centre to the Poppleton Community Trust has now been completed and the lease of the Land at Clifton Without to Clifton Without Parish Council is progressing towards completion.

9. The construction of the new allotments in Rufforth is now completed. The lease to the Parish Council is now nearing completion and the Parish is working with potential occupiers whom are now starting to plan out their plots.

10. Responses to the section 123 notices were received concerning;

- Former Herdsman cottage Micklegate Stray (159 Mount Vale)
- Former Herdsman cottage Walmgate Stray (103 Heslington Road)
- Land at Mayfields South
- Rowntree Park Tennis Pavilion
- Land at Chapmans Pond

Responses for each site are provided as Annexes and are considered in the following sections below.

159 Mount Vale and 103 Heslington Road

11. Three responses were received to the intention to dispose. One of the three was an expression of interest in purchasing 103 Heslington Road, rather than a comment on the principle of the disposal. There were two representations regarding 159 Mount Vale as follows.

12. The first representation was received from a local resident expressing concern about the overload of short term holiday lets in the city, and asked whether the Council had any plans to restrict the use to permanent residence only? Secondly, in view of the historical importance of the property, had the Council offered the property to York Conservation Trust?

13. The second representation was received from the Micklegate Planning Panel. The Panel provide comments on planning applications in Micklegate and there are a number of similar panels in the city. It is understood that they were set up under the Ward Committees to provide "community" planning comments in the areas without Parish Councils. They are independent but supported to some extent by the Community Involvement Officers.

14. Their submission states that they do not want to object to the disposal, but have some concerns.

15. Their main concern is about the possibility of the property being let for holiday use. They feel that a permanent resident is likely to give the appropriate level of attention to the care and maintenance of the house and grounds. They would, therefore, welcome the inclusion of a covenant in the sale agreement to ensure future use as a permanent residence (if legally possible).

16. Legal Services' advice has been sought to consider whether a sale could incorporate a covenant to restrict holiday let use and this is set out in the Legal Implications section below. In summary, it is possible to restrict future use of a property by way of a covenant however this is more difficult to monitor and enforce in a disposal of the freehold than if some ownership of the property was retained by the Council by way of a long lease.

17. Enquiries with local estate agents have revealed that offering a 250-year lease of the property for sale on the open market will not make any material difference to the value, compared to a freehold, as long as the ground rent remains at a peppercorn for the term of the lease.

18. The council could thus continue as it first planned, to sell the freeholds of the cottages without any sale restrictions on the permitted user. Alternatively, it could grant a lease on each cottage, restricting the user to a private main residence and further to provide controls over any planned alterations to protect the historical nature and content of the properties, as well as restricting extensions and boundaries which would be out of context with the setting of the Stray. Given there is no material impact on the likely sale values, it is considered that the disposals should be by way of a leasehold disposal (restricting the user to a private main residence and further to provide controls over any planned alterations to protect the historical nature and content of the properties, as well as restricting extensions and boundaries) which will be offered on the open market.

Land at Mayfield South

19. One response was received which raised the following questions on the intention to grant a 25-year lease to the Friends of York Railway Pond and Reserve;

    a) Do the Friends of Railway Pond have an adopted constitution? Have they held an Annual General Meeting (AGM)?

    b) Who are the Trustees, how were they appointed, was this opportunity open the wider public?

    c) What are the mechanisms for planning, oversight and scrutiny of how those funds are spent in pursuit of the objects?

d) What public meetings have taken place in the since 2017?

e) The 5 year plan contained in the bid consists only of a list of practical tasks to be accomplished in different areas of the site and shows no strategic thinking or longer term goals for the site.

20. The decision to offer the Friends of Railway Pond and Nature Reserve ("Friends") the management of the site pursuant to a 25 year lease was based on the premise that a) the group was an offshoot of York Nature Environment Trust (YNET), who previously managed the site and as such, some of its members had been involved in both the management of the site and YNET for decades. Hence, whilst the Friends may be a new organisation it has within its membership considerable experience of managing public open space.

21. Like many similar voluntary organisations, the Friends found it hard to hold a fully open AGM and regular public meetings during the Covid pandemic. The Friends were, in part, also reacting to the Council and waiting to see what response their bid received.

22. At no point in the site's/pond's history have the Council had any direct oversight of its operation, including how any funds are used. This is in line with other clubs which use Council owned land e.g. football, bowls, and tennis. Regular informal contact is maintained with the Friends along with ad hoc site visits. Local Ward Councillors also maintain informal local oversight of the pond.

23. Since the bid was submitted (February 2020), the Friends have updated their constitution (November 2021) and decided to retain a committee structure without Trustees. They have increased the amount of public information on display at the site with two large noticeboards. They display committee minutes and notice of their AGM in June 2022, contact numbers, risk assessments, fishing rules, regulations, and events. Practical work also continues on site, with safety and surface improvements to the perimeter path, refurbishment of fishing pegs and improved measures to protect areas set aside for wildlife. This demonstrates a long-term vision for a safe, well-cared for and welcoming site.

24. Having regard to the above, it is recommended to proceed with granting a 25 year lease to the Friends of York Railway Pond and Reserve.

Rowntree Park Tennis Pavilion

25. One response was received from a local resident which sought to clarify if the 'community use' of the pavilion is related to purely sports activities and therefore not likely to cross over/threaten with the work/fundraising ability of the Friends of Rowntree Park in the future for Rowntree Lodge.

26. The Pavilion will be managed by Rowntree Sports Association, a partnership of York Canoe Club and Rowntree Park Tennis Association. Priority for its use will naturally be for these organisations, for example the adjacent tennis courts are used 7 days a week (weather permitting).

27. The building is of modest size, (the largest room being 4.3m x 4.8m), and prone to flooding. It is therefore considered unlikely that any other community use would have detrimental impact in the possible future operation of the Lodge, which has larger rooms, has no risk of flooding and would be free from the daily needs of the tennis and canoe clubs. It is therefore recommended to grant a lease as planned to the Rowntree Park Sports Association for 25 years.

Land at Chapmans Pond

28. One response was received from a local resident who sought to clarify how the Chapman's Pond Community Interest Company (CPCIC) will fund work to the Pond, how will they afford the lease and what would happen to the ground if the lease was not taken on by the CPCIC? The resident also stated that they (CPCIC) cannot stop night fishing.

29. Funding for the care of the pond is provided from fishing income, ward and other 3rd party grants, supported by voluntary labour. This is the model which will be used going forward; projects only go ahead if funding is secured. CPCIC have a history of living within their means. The land is being offered rent free so there is no charge for the lease, in line with other Community Asset Transfers.

30. If the lease were not taken on by the CPCIC (the Committee) the area would revert back to the Council for day to day care and maintenance. The immediate effect of this would be the ceasing of the voluntary fishery bailiff service as there is no resource in the council to manage and support the bailiffs. This would result in unregulated fishing (day or night) with no control of who fished, when angling took place, or how anglers

behaved. Maintenance would revert to core tasks such as grass cutting and litter picking. Without community involvement, further developmental projects are highly unlikely. It is, therefore, recommended to proceed with granting a 10 year lease to CPCIC.

Consultation

31. Consultation with the residents of York has taken place via the Section 123 notice publication process.

Council Plan

32. This proposal supports and contributes to the following Council Plan priorities:
    - An open and effective council
    - a greener and cleaner city
    - Creating homes and a world class infrastructure.

Implications

Financial

33. The change in disposal of the two former herdsman's cottages from freehold to leasehold may impact the level of capital receipt. It is not considered that this will be material. The progress on the remaining community asset transfers is in line with the original proposals and mitigates costs to the Council, if it were to otherwise operate and manage these facilities itself.

Human Resources (HR) – there are no HR implications

One Planet Council / Equalities – there are no One Planet/Equalities implications

Legal

Restricting Future Use of a Property

34. It is possible to restrict the future use of a property when it is sold by imposing a covenant in the freehold conveyance that the property can only be used for certain activities, e.g., a main or principal residence. However, this would be difficult to monitor and enforce compliance with, given the potential complexities in determining whether the buyer/owner

had sublet to someone, or was renting out on short-term basis for holiday let accommodation. The ultimate remedy for breach of a covenant of this nature would be for the Council to apply to court for an injunction. Even if a court agreed that the covenant was valid, binding and enforceable, it is unlikely that a court would grant the Council an injunction preventing the owner from subletting or renting out for holiday accommodation. In fact, a court may only award the Council nominal damages if it considered the covenant was being breached as the court may take the view that breach had not caused any material loss or harm to the Council.

35. A restriction on the future use of a property would be more enforceable if a property was disposed of by way of a long lease, such as 250 years, for a premium payment. The lease could contain a user clause restricting the use to a permanent residence as well as a subletting clause to only allow subletting on assured shorthold tenancies for a minimum of 6 months. There are a number of remedies available for breach of a user restriction in a long lease, although the courts tend to favour ordering a tenant to pay compensation, rather than authorising termination or forfeiture of the lease, or making an injunction.

36. There is a risk with either method of restricting the future use of a property that the buyer or leaseholder could apply to a Tribunal to release or modify a user restriction or covenant under Section 84 of the Law of Property Act 1925. They would need to persuade the Tribunal that the user restriction was obsolete, or prevented a reasonable use of the land, or that a discharge or modification of the covenant would not ‘injure’ the Council.

Crime and Disorder – there are no Crime and Disorder implications.

Information Technology (IT) – there are no IT implications.

Property – set out in this report.

Other – there are no other known implications.

Risk Management

38. There are no known risks associated with this decision.

Contact Details

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Specialist Implications Officer(s) List information for all

Implication - Financial	Implication - Legal
Jayne Close Principal Accountant Tel No. 01904 554175	Gerard Allen Senior Lawyer (Property) Tel No. 01904 552004

Wards Affected:

Dringhouses and Woodthorpe
Fishergate
Micklegate

For further information please contact the authors of the report

Background Papers:

Executive on 26th November 2020 Update on the Asset Management Strategy 2017-2022

Executive on 18th March 2021 Community Asset Transfer update

Annexes

Annex 1 - 159 Mount Vale. Response to Section 123 Notice from local resident.

Annex 2 – 159 Mount Vale. Response to S. 123 Notice from Micklegate Planning Panel.

Annex 3 – Mayfields South. Response to Section 123 notice from local resident.

Annex 4 – Rowntree Park Pavilion. Response to S. 123 Notice from local resident.

Annex 5 – Chapman’s Pond. Response to S.123 Notice from local resident.

List of Abbreviations Used in this Report

(AGM) Annual General Meeting
(CPCIC) Chapmans Pond Community Interest Company.
(YACIO) York Allotments Charitable Incorporated Organisation
(YNET) York Natural Environment Trust