

Asset Transfer Policy - September 2021 – Transfer of Assets to Parish and Town Councils

Introduction

Eastleigh Borough Council (“the Council”) has since 1994, adopted a policy of transferring assets to parish and town councils. This process aligns with the Council’s approach to localism, working constructively with parish and town councils for the benefit of communities. The approach is based on the principle that decision-making should take place as close to communities as possible, which includes decisions both about the way an asset is managed and about how much money is raised and spent. It also gives parish and town councils the opportunity to play a greater role in improving their areas and the quality of life of their residents.

The policy is based on the presumption that the Council will devolve assets unless it can be demonstrated that we can’t.

This updated policy document includes policy decisions taken over several years and captures the current approach.

Benefits of Asset Transfers

1. Decision-making is devolved and locally controlled.
2. Management, quality and improvements to assets are more responsive to local interests.
3. Residents then contribute directly to the costs for their area, paying once (as now) via the parish or town council precept, with the Council’s precept in that parish adjusted down to reflect the devolved costs.
(The Council will continue to act as the collection agency, collecting all the precepts for parish and town councils, Hampshire Fire and Rescue Service, Hampshire County Council, Hampshire Constabulary and the Council itself).
4. In the event of local government reorganisation, transfer of assets would ensure that control is retained at parish and town council level and not centralised to a remote unitary council or combined authority.

Initial considerations

5. Type of asset. The Council welcomes discussion on transfer of any assets to parish and town councils; the most likely transfers will be of assets which have local relevance i.e. used and enjoyed by residents of a single parish or town council area. Where this is the case the policy presumption will be that the town or parish council rather than the Council, should own the asset, subject to Cabinet ratification. Parish and town councils should approach the Local Area Manager (LAM) in the first instance.
6. Types of assets that will usually be transferred include:

- a. Open spaces
 - b. Countryside sites
 - c. Allotments
 - d. Cemeteries
 - e. Play areas
 - f. Community centres
 - g. Bus Shelters
 - h. Playing Fields
 - i. Public Toilets.
7. Assets of strategic importance and/or used by residents from across the Borough may also be considered, but are less likely to be approved by the Council for transfer.
 8. Designated sites: certain sites carry an ecological designation (SSSI, SINC, SAC, SPA, Ramsar, Local Nature Reserve, Local Wildlife Site) and require enhanced management. Protecting the ecological value of such sites is a part of the Borough's Biodiversity Strategy and approach to tackling the Climate and Environment Emergency. Such assets will be considered by the Council for transfer, but parish and town councils should consider the extra management issues required for maintaining ecological designations and preserving amenity value. Specialist Council advice and services can be 'bought-back' by parish and town councils to support the management of designated sites. The Council reserves the right not to transfer such sensitive sites, and/or to transfer sites conditional on parish or town councils entering a service agreement with the Council for expert management and/or advice for a period of time, until the parish or town council has acquired such expertise.
 9. The Council encourages a strategic approach to asset transfers. Agreements for transfers will be given by the Council in the context of the overall scope of potential transferable assets. This will avoid creating a patchwork of asset ownerships and management in a parish area which would be difficult to manage and confusing to residents.
 10. Good planning and timetabling is required on both sides so that changes to precepts and Special Expenses can be made ahead of budget decisions by both the Council and parish or town councils, and the issuing of Council Tax bills.
 11. The Council will bring the asset up to a reasonable standard and pay associated costs, ahead of transferring the asset, subject to negotiation with the parish or town council. The parish or town council may wish the asset to be improved to a higher standard and this is for the parish or town council to arrange and to meet these costs from their budget, setting their precept accordingly.
 12. Trees. The Council currently has a programme of both scheduled and reactive inspection and maintenance. Trees on land being transferred will be inspected and any necessary maintenance carried out ahead of transfer. The Council will provide advice concerning liabilities and costs relating to trees, and a buy-back service will be made available. Where there is a shared need across a number of parish and town councils the Council can arrange training for grounds maintenance staff.

13. Once an asset is identified for possible transfer, the process may involve a number of queries and issues to be resolved ahead of a formal decision on each side to proceed with a legal transfer. Local Area Managers will oversee this process.
14. The Council decision about whether an existing asset can be transferred to a parish or town council will be made by the Council's Cabinet. (A different process applies to assets arising from s106 agreements.) The Council's Asset Management team will then issue an instruction to the Council's Legal Services' staff to undertake and complete a legal transfer.
15. Identifying assets for transfer, tracking the process of pre-transfer and legal transfer work will be overseen internally by the Council's Community Assets Board. The Local Area Manager will be point of contact for parish and town councils, usually liaising with the clerk.
16. Where new assets are created as part of new developments, the Council has a clear process of early engagement with parish and town councils, negotiation with developers, informing the design and checking quality of provision by the developer and then legal transfer, first to the Council and then onward to the parish or town council, unless a direct transfer from the developer to the parish or town council proves possible. In some cases the Council, rather than the developer, will provide the asset (e.g. a play area). Local Area Managers can provide more information about this process.
17. Early engagement with parish and town councils is appreciated on how many and which assets to transfer. This helps the Council to plan the work required to complete transfers, and plan for any changes to services e.g. where the Council requires a reduced staff team, due to work transferring to parish or town councils.

Transfer process

18. Assets will be transferred at a nil consideration. (See also section on 'commuted sums' below.)
19. The Council will pay the reasonable legal costs of parish and town councils to transfer assets. This is currently (September 2021) deemed to be £750 per asset transfer.
20. Use of assets post-transfer. The legal transfer will include any relevant covenants which ensure the value of a piece of land or an asset to local people is protected. The Council may impose terms in a transfer that the parish or town council needs to seek agreement before disposal of an asset or a change of its use, or that a percentage (up to 100%) of the value of the asset realised on disposal accrues to the Council. If disposal is considered, the Council should first be offered the asset back without cost. The transfer terms will also cover the situation where the parish or town council ceases to exist and there is no provision for the transfer of assets to another local authority.

21. In some cases the usage of a transferred asset may be safeguarded by the Council through a community use management agreement and/or agreed asset management plan.
22. Prior to the completion of a legal transfer (and where this may take time to complete), town and parish councils may enter an agreement with the Council to manage and maintain the asset including enhancing the maintenance standard above that which the Council would usually apply, at the expense of the parish or town council.
23. Each asset transfer is different and may carry a number of legal or technical issues to be resolved by several Council staff. The Council will seek to progress transfers without unnecessary delay. In rare cases Ministerial consent or public consultation may be required to effect a transfer.

Post transfer

24. Special Expenses. The Council uses 'Special Expenses' (an element of Council Tax) to raise funds from residents in each parish area to pay for local assets that the Council holds. When an asset transfers, the Council will stop charging local residents this Special Expense element of Council Tax. Parish and town councils may choose to increase or reduce their precept by a similar amount to fund their (new) costs of managing the asset. Residents will not pay twice.
25. Parish and town councils are advised to plan carefully for the repair and renewal of their assets. The parish or town council may request that the Council negotiates and collects further funding from future development for improvements and enhancements to the assets where future development would increase usage of the asset. This reflects the continued interest the Council has in supporting communities to have the best possible assets and community infrastructure, whoever is the owner of the asset.
26. In some cases the Council may have 'commuted sums' i.e. funding collected from developers for the initial years of maintenance, which will be passed over to the parish or town council.
27. The Council will assist town and parish councils with initial advice and guidance on management and maintenance of an asset e.g. trees. The Council may provide management plans and service specifications as starting points for parish and town councils to consider future management. Town and parish councils should ensure that they have in-house or outsourced the required capability and capacity to manage and maintain assets once in their ownership. This may require new technical skills or knowledge e.g. in relation to trees or ecology, inspections of play equipment.

Town and parish councils may 'buy back' services from the Council to manage and maintain assets that have been transferred. Such services would be funded by the town or parish council. The Council will draw up management plans, service level agreements and contracts to carry out such work.