

**Report to:** Cabinet  
**Date of Meeting:** 2 October 2019  
**Public Document:** Yes  
**Exemption:** None  
**Review date for release** None



**Subject:** **Asset Devolution Programme Pilot: Beer Parish Council**

**Purpose of report:** This report is seeking Members to approve the business case for transfer of assets to Beer Parish Council. The Parish Council have submitted a proposal to EDDC which seeks the transfer of responsibility for various land and property assets from EDDC to the Parish Council. This report considers the merits and implications of the proposal for the Council and makes recommendations based on these findings.

The Parish Council proposal is being treated as a pilot project in order to enable the Council to consider further the potential to roll out an asset devolution programme across the district subject to further Cabinet approval.

**Recommendation:** **That Cabinet Recommend to Council**

- a) **The transfer of assets as identified within this report to Beer Parish Council for nil consideration in accordance with the provisions of paragraph 5 of this report.**
- b) **Responsibility for agreeing detailed terms and conditions for the freehold / long leasehold transfers to be delegated to the Council's Deputy Chief Executive in consultation with the Strategic Leads for Finance and for Governance & Licensing.**

**Reason for recommendation:** Consideration and support from Members to the transfer of land and buildings as identified within this report.

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**Financial implications:** The financial details are contained in the report. Based on the assumptions detailed in the report there is a cost in the first year to the Council of £2,500 but over 10 years the savings accruing to the Council will be in the order of £300,000. The report also highlights the potential income (possibly as high as £25,000) that this Council is foregoing by transferring assets if it decided to utilise these assets differently itself. The recommendation aligns to the Council's Transformation Strategy.

**Legal implications:** It is permissible for the Council to dispose of assets (whether by freehold sale or granting of a lease) to a parish council and this does not have to be at market value provided there are justified reasons not to do so, which it is considered are satisfied in this case. Legal Services have been involved previously in respect of the proposed transfer and will continue to assist in structuring the transactions and agreeing the

specific heads of terms and disposal requirements as required. More specific legal advice will be provided as the project continues including ensuring compliance with relevant legal duties for disposal of land.

**Equalities impact:** Low Impact

It is not anticipated that the transfer of assets will have an adverse impact on people with protected characteristics as it is the stated intention of the Parish Council to continue the current service provision and enhance where possible. Contractual documentation will include restrictions around use of assets and services provided to safeguard these continuing uses.

**Climate change:** Low Impact

Existing uses of the assets will broadly continue. There is the opportunity over time to increase the extent of maintenance and grounds works undertaken by local contractors or volunteers based in the village therefore less travelling.

**Risk:** Medium Risk

The risk considerations are set out in the main body of the report, along with the steps proposed for mitigation against these risks.

**Links to background information:**

[Cabinet Report dated 11<sup>th</sup> May 2016 – agenda item 16](#)

[Appendix A – plan of land to be transferred \(indicative only\)](#)

[Appendix B – Business Case](#)

[Beer Pilot Asset Transfer Proposal – Supporting Statement](#)

[Beer Assets photographs](#)

**Link to Council Plan:** Encouraging communities to be outstanding  
Continuously improving to be an outstanding Council

## Report in full

### 1.0 Background

- 1.1 A Cabinet Report dated 11<sup>th</sup> May 2016 recommended a new direction in the management of the Council's property portfolio and focussed in part around empowering and supporting local communities to take on community assets and services. The cost of maintaining the Council's non HRA assets was assessed as £2.3m per annum with the majority of these costs relating to sites providing discretionary services. At the time of the report, Beer Parish Council had already submitted their own business plan with a request to take on services in Beer along with associated assets. The report proposed that this be used as a pilot. The wider recommendation around management and devolution of assets was also supported.

- 1.2 This asset transfer is being driven on behalf of the Parish by Cllr Pook as Chairman of the Parish Council but is also the EDDC Portfolio Holder for Asset Management. Due to this potential conflict Cllr Pook whilst campaigning for progress has distanced himself from an EDDC perspective and will be excluded from EDDC decision making on transfer of assets to Beer Parish Council.
- 1.3 A Cabinet Report for April 2017 was prepared by the Council's then Principal Estates Surveyor recommending the transfer of assets and devolution of services at Beer, subject to detailed terms and conditions still to be agreed. This report was pulled due to insufficient detail and robustness of the then business case. At that stage there was a significant short term cost to EDDC from transferring these assets through fixed costs not being able to be absorbed.
- 1.4 Work on the Beer pilot then progressed during the latter half of 2018 after a period of inactivity over the preceding year due to changes in staffing and in early 2019 Officers (Service Leads for StreetScene, Environmental Health & Car Parks and Senior Manager – Property & Estates) met with Cllr Pook to work through in detail the business case prepared. Concerns by EDDC were slowly but surely worked through and solutions to each found and SMT are now supportive of the business case.
- 1.5 On 2<sup>nd</sup> September 2019 Asset Management Forum considered a report from Senior Manager – Property & Estates and resolved that a report be presented to Cabinet to:
- a. Transfer assets as identified, to Beer Parish Council for nil consideration;
  - b. Responsibility for agreeing detailed terms and conditions for the freehold/ long leasehold transfers to be delegated to the Deputy Chief Executive.
- 1.6 Alongside the Beer Pilot, a draft Community Asset Transfer Policy has been prepared. Once adopted this will help better manage the issues encountered with the Beer Pilot, provide guidance to all parties, a strict but achievable timetable for decision making and generally ensure that contentious issues are identified and addressed at an early stage to avoid the issues faced with the Beer Pilot which we've had to work through.

## **2.0 Proposal**

- 2.1 Transfer of the following assets freehold / or under very long lease to Beer Parish Council:
- Beer Head Car Park (southern strip and central areas only)
  - Star Bank
  - Play area above Pumping Station along with possibly the Underleys play area (HRA still to be consulted and will be subject to separate decision making)
  - Jubilee Gardens PC's
  - Jubilee Gardens Access ' Hardstanding view point – includes income received currently of £700 per annum from RNLI
  - Jubilee Gardens
  - Charlies Yard
  - Beach Court Car Park

These are shown coloured red on the attached plan in Appendix A.

- 2.2 The proposal is for the freehold or long leasehold transfer of those assets. The Parish Council would have flexibility to sell / sublet / assign provided that any financial returns are reinvested in the Beer community and that the uses remain broadly for public enjoyment and benefit and that the key services remain in some form. That said, as an example, Beer

Parish Council would be permitted to convert the public convenience building into a café/ ice cream kiosk provided that a public convenience provision were retained either within the building or close to – it could be smaller and the income generation from the remainder of the building could be used to support ongoing costs. Likewise Charlies Yard could be built on provided that the use benefitted the community.

2.3 For avoidance of doubt, areas to be retained by EDDC include:

- Beach – due to complexities around day-to-day management and because of regularisation of agreements being needed but this does generate a commercial income
- Cliff – Parish Council are not prepared to accept this liability. This is a concern to EDDC, has been worked through at length and has now been accepted by Officers as part of this wider asset transfer
- Majority of Beer Head Car Park
- Bottom section of Beach Access Road
- Central Car Park

### **3.0 Market Values of Assets To Be Transferred**

3.1 In January 2017 Torbay Development Agency were instructed to undertake market valuations of relevant sites in Beer. Valuations to note are as follows:

- Jubilee Gardens Public Convenience - £71,000
  - Shelter adjacent RNLI shop hut - £12,000
  - Charlies Yard & Shelter - £37,000
- Say £130,000 as at 2019.

3.2 Jubilee Gardens is of nominal market value and Beach Court Car Park which generates a net income of circa £12,000 has a market value of £185,000 (est) as at 2019.

3.3 Total market value of assets to be transferred therefore £315,000.

3.4 Under the Local Government Act 1972, Local Authorities are given powers to dispose of property 'in any manner they wish', including the sale of freehold interests. The only constraint is that a disposal must be for the best consideration reasonably obtainable. Under the Local Government Act 1972: General Disposal Consent (England) 2003, powers were conferred to a local authority to sell at less than best value under the following specified circumstances:-

- a) The LA considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or any part of its area, or of all or any persons resident or present in its area:
  - i. The promotion or improvement of economic well-being;
  - ii. The promotion or improvement of social well-being;
  - iii. The promotion or improvement of environmental well-being; and
- b) The difference between the unrestricted value of the land and consideration does not exceed £2,000,000.

3.5 The proposals within this report satisfy these requirements.

## **4.0 Consequences to EDDC of Transfers**

- 4.1 It is worth noting that the proposal does involve transferring a number of assets which whilst historically have not been used to generate a significant commercial return other than the £700 per annum from RNLI do have the potential to provide an income to EDDC moving forward should they not be transferred and EDDC look to better 'sweat its assets'. Both Charlies Yard and the hard standing area below Jubilee Gardens have potential to generate income through café / kiosk / pop-up café type propositions. Interestingly EDDC were approached earlier this year by an operator looking for sites for a pop-up café, to be run from a high quality stylish up-cycled shipping container. Uses would be subject to planning but a conservative view would be 50% probability at generating rents of circa £10,000 per annum within 12 months and possibly as high as £25,000 per annum after a few years. These sites really are some of the best in East Devon for providing a restaurant type offering with sea views and could be capitalised on by EDDC to provide additional income along with improving the vibrancy of the area.
- 4.2 As for costs, clearly the transfer of assets reduce the future cost liability for EDDC but many savings are not immediate as most of StreetScene's costs are fixed (staffing/ equipment etc.) and these costs cannot be reduced merely by transferring a small number of assets within a locality. Over an extended time period and with the possibility of other transfers taking place there might be the potential to make savings but these are probably 5 years away if other associated transfers come forward that can be grouped to relinquish staffing resource. This is addressed further in the Business Case section below and a solution has been found whereby the Parish Council buy-back EDDC services but reducing their reliance on EDDC on a tapered basis over 5 years.
- 4.3 A proportion of EDDC's car parking revenue is required to support the Parish Council, reducing to zero on a tapered basis over 7 years.

## **5.0 Business Case**

- 5.1 Development of a Business Case has been driven by Beer Parish Council using data provided initially by EDDC around costs and incomes attached to those assets in Beer, updated where possible. The rationale and figures have been checked by respective Service Leads at EDDC and also reviewed with Strategic Lead - Finance. The rationale is broadly as follows:
- All Beer assets (those being transferred and those not being transferred) currently cost EDDC £106,805 but generate £232,879 therefore providing a surplus income of £126,075 per annum.
  - Of those assets to be transferred there is a nett cost to EDDC of circa £55,000 per annum.
  - Post transfer, nett costs to Parish Council would be circa £57,500 per annum.
  - Parish Council would require an annual payment from EDDC from car parking revenue of circa £57,500 per annum to offset that increase in cost to them, this tapering to zero after 7 years.
- 5.2 Attached as appendix B is the Business Case summary which will be described below following the same order as presented.
1. The proposal is to transfer the Beach Court Car Park to the Parish Council. EDDC will continue to manage this car park for which the Parish Council will pay EDDC's costs, hence including the net income figures within. The Parish Council would be responsible

for signs, lines, surfacing, boundary repairs etc. This will generate the Parish Council £12,000 in year 1.

2. The Parish Council have assumed they will capitalise on rental income opportunities from lettings of shelters and PC's. This is to be phased in and appears reasonable. EDDC to pay Parish Council a dowry of £45,500 in year 1 (this along with the £12,000 income from Beach Court car park equating to the £57,500 referenced above in 5.1), tapering down in equal tranches to £0 in year 8. This is a cost to EDDC but is balanced by the fact that those assets being transferred currently cost EDDC £55,000 per annum. In essence, together with Beach Court Car Park we are providing the Parish Council with £57,500 in year 1, reducing each year.
3. The Parish Council will pay StreetScene £30,000 in year 1 and in exchange StreetScene will provide those same works to those assets to be transferred as pre-transfer. This payment and the associated obligations on StreetScene to do the works will taper to zero after 5 years. This fundamentally addresses the big stumbling block to the previous business case where EDDC were having to carry their fixed costs as a loss. This works as long as the StreetScene fixed costs can in fact reduce over this same period i.e. through not filling vacant posts, restructuring of rotas etc. assisted through other asset transfers also happening across the wider locality. If these savings can't be made, EDDC will need to absorb those costs through a Transformation or other budget but balanced against the significant wider savings to EDDC which increase year on year.
4. The Parish Council have assumed following their own investigation that for those works they take on, they can deliver at 55% of EDDC's costs, taking on these works gradually.
5. The Parish Council have also assumed 15% of Parish Council works will be undertaken by volunteers therefore without cost.
6. The Parish Council have allowed for a contingency / sinking fund of 10% of maintenance costs.
7. The Parish Council make a very modest loss in years 1 and 2, incomes accumulating to circa £5,500 by year 5 but then by year 6 rely on generating commercial income over and above that currently forecast, most likely through Charlies Yard or some new premises on Jubilee Gardens and supported by income from events. If the Parish Council fail to achieve this, there will be a loss to them of circa £29,000 over 10 years. Opportunities do exist to generate additional cashflows of circa £10,000 plus per annum as referenced in 4.1 of this report and possibly as high as £25,000 per annum after time.
8. EDDC lose £2,500 in year 1 but thereafter generate a positive cashflow equating to circa £300,000 over 10 years but have of course relinquished the income at Beach Court car park and any other income generating opportunities from those assets transferred.

5.3 In summary, the Parish Council are taking on a not insignificant risk here but in exchange for giving them local control of the assets, their use, maintenance and management and decision making around changes in use and income generating opportunities. The Parish Council will need to generate real savings and / or additional income to ensure a balanced budget by year 10 or sooner. EDDC will make savings of circa £300,000 over 10 years but to do so are transferring assets of circa £315,000 market value as of 2019.

## 6.0 Key matters for consideration

6.1 In considering this proposal, the Council have / will satisfy itself of the following:-

- 1) The proposal aligns with the Council's priorities as set out in the Council Plan 2016 – 2020

- 2) The Council will mitigate future financial and operational liabilities
- 3) The Parish Council will evidence and ensure they have the appropriate skills, knowledge and expertise to sustain the service provision in the long term
- 4) The Parish Council will be required under any agreement to have in place clearly defined structures, roles and responsibilities to deliver the services
- 5) The Parish Council will be required under any agreement to have in place clear decision making processes with an approved constitution, governance and management controls
- 6) The Parish Council will be required to meet with all insurance, equality standards, child protection, health and safety and licensing requirements
- 7) The proposal has the support of the local community
- 8) The proposal must evidence that implementation of the devolving of service provision and the assets associated with them promote or improve the economic, social or environmental well-being of the area or residents in order to satisfy best consideration requirements under the Local Government Act 1972
- 9) The Council is satisfied that there is no State Aid given the transfer of public functions between one public body and another(See 6.3 below)
- 10) Potential positive or adverse implications for staff have been considered

6.2 Where and if outstanding, these matters will be addressed prior to entering into any agreement for transfer of assets to the Parish Council.

6.3 In relation to item 9, the rationale behind State Aid is to prevent the distortion of markets as a result of explicit or public subsidies. If the Parish Council carry out purely local activities to meet local community need on a 'not for profit' basis, then any transfer is unlikely to count as State Aid. In certain circumstances if the Parish Council let space out to other bodies, accidental 'leakage' of Aid which inadvertently leads to these other bodies gaining an unfair advantage over their competitors may occur. Any agreement between the Council and the Parish Council will require the Parish Council to seek and obtain the Councils prior approval to any sub-letting for any purpose of the transferred assets in the first five years post transfer.

## **7.0 Pre-Requisites for Transfer**

7.1 Assets to be transferred must be in a serviceable condition with no serious outstanding defects. This might be by undertaking works prior to transfer or attaching a financial sum for the Parish Council to implement but it has been made clear this will not be a large sum and will not allow for works identified as needed in the short term future, something which previously was being requested. There is therefore a further less quantifiable saving to EDDC. In essence if some building component is broken, it will be repaired, but anything that is dated or in poor condition but functioning adequately will not.

7.2 A service level agreement between StreetScene and the Parish Council setting out the scope of works to be undertaken and funded, detailing how this service will then be tapered down over 5 years.

7.3 Agreement of Heads of Terms to include sufficient restrictions to ensure that those expectations within 2.2 of this report are protected.

## **8.0 Risks**

8.1 This asset transfer places the risks of owning and operating these assets very much onto the Parish Council. If they fail to start generating additional income there is a risk that the public use of these assets might be compromised. That said, opportunities to generate this income exists, and the Parish Council are prepared to accept this risk for the greater good of Beer and to deliver their vision. It is not intended to provide any provisions for EDDC to take back the assets should the Parish Council fail in their management of these.

8.2 Other key risks of the proposed asset devolution have been identified as set out below along with mitigation measures:-

	<b>Risk and/or Challenge</b>	<b>Mitigation Measures</b>
1.	Continued standard of service delivery: Failure could reflect on the Council as well as the Parish Council. The overriding concern must be for residents and visitors to Beer and East Devon.	<ul style="list-style-type: none"> <li>i. Clear service level expectations detailed in a 5 year monitoring agreement. This will document such items as minimum operating hours, scope of activities, quality standards and basis for monitoring and measuring outputs.</li> </ul>
2.	Management of land and buildings: statutory compliance, maintenance and repair	<ul style="list-style-type: none"> <li>i. Testing of Parish Council business case and resources/ specialists to be used.</li> <li>ii. Requirement for Parish Council to enter into service level agreement with Council where deemed necessary.</li> </ul>
3.	That the devolution will have a negative impact on the Council's income revenue	<ul style="list-style-type: none"> <li>i. A requirement for the Parish Council to provide a robust business plan.</li> <li>ii. A detailed assessment of the Parish Council's business plan and implications for the Council</li> </ul>