

Sale of County Hall

**Cheshire West & Chester Council and Cheshire East
Council**

Audit 2009/10

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Executive Summary

Introduction

- 1 Local government reorganisation in Cheshire took effect on 1 April 2009. Two new unitary councils replaced Cheshire County Council and six district councils:
 - Cheshire West and Chester Council (Cheshire West); and
 - Cheshire East Council (Cheshire East).
 - 2 Some properties owned by the former County Council transferred into joint ownership of Cheshire West and Cheshire East. County Hall in Chester was one such property. In March 2009 Chester University expressed an interest in acquiring County Hall from the two new councils.
 - 3 HQ is a major new development close to County Hall, comprising office space with separate residential and hotel facilities. Cheshire West decided that HQ met their vision for modern, efficient and effective office accommodation, in a flagship development on a major gateway into Chester. Cheshire West explored the possibility of purchasing HQ alongside the negotiations to sell County Hall.
 - 4 Between May and October 2009 the two new councils negotiated the sale of County Hall to Chester University, while Cheshire West also completed the purchase of the HQ office development. In August 2009, the District Auditor received correspondence from local government electors and from a member of Cheshire West expressing concern at how the transactions were being managed. In summary questions were asked about:
 - apparent lack of public consultation;
 - perceived absence of proper option appraisal and/or cost benefit analysis; and
 - overall value for money.
- There was also substantial coverage in the local press.
- 5 The Audit Commission's Code of Practice 2010 requires auditors to give a conclusion as to whether they are satisfied that an audited body has made proper arrangements for securing economy, efficiency and effectiveness in the use of its resources. It is the audited body's responsibility to put in place those arrangements and to ensure proper stewardship and governance.

6 In view of the exceptional and material nature of the County Hall and HQ transactions, which occurred soon after local government reorganisation, I have used them to test the arrangements that each council has put in place for securing value for money. In reaching my conclusions for 2009/10 in relation to Cheshire West and Cheshire East councils, I have considered how the sale of County Hall impacts on my assessments in three key areas:

- understanding of costs and performance in decision making;
- promoting and demonstrating the principles and values of good governance and engagement with stakeholder; and
- ensuring that assets are fit for purpose and provide value for money.

7 This is a joint report to Cheshire West and Cheshire East Councils - written by the external auditor of both bodies. It looks at the actions of both councils in relation to the sale of County Hall. However, it is important to recognise that the County Hall transaction could not have happened had Cheshire West not been able to purchase the HQ office building. A separate report has been issued to Cheshire West Council in relation to its purchase of HQ.

8 This review includes analysis of a substantial amount of documentation provided by both councils and interviews with a small number of key officers who led on the disposal of County Hall. My conclusions are based upon the evidence provided by both councils.

Conclusions

9 The opportunity to sell County Hall came much earlier than either council expected. It represented a good opportunity for them to review their accommodation strategies at an early stage. For Cheshire East it also represented significant income and the opportunity to reduce their ongoing liability for the building after their staff had moved out.

10 I am satisfied that the decision making processes of the two councils, taken together, followed a reasonable process. The evidence leads me to conclude that the sale of County Hall did represent value for money for council tax payers. The councils were eventually able to satisfy themselves that the sale of County Hall represented value for money, obtaining best consideration in the terms of Section 123 of the Local Government Act 1972.

11 The sale was one of the first high profile decisions taken by the councils. Both councils must now reflect on their experience of the sale of County Hall and learn the lessons. This will be important for the ongoing rationalisation of their property portfolios whether jointly owned or not.

12 I recognise that the pressures of operating in a fast-moving commercial environment can make the over-riding need to demonstrate proper governance and stewardship more difficult. It is inevitable that decisions need to be made quickly and it will not always be possible to align receipt of specialist advice and decision-making with formal meetings. In such circumstances it remains important that effective arrangements are put in place to update and report back through a council's formal decision-making processes. Against that background, I identify a number of procedural issues where, in my view, the need to act quickly was sometimes at the expense of proper processes and good governance.

13 I also identify areas where the two councils could have worked more closely together to complete the sale and share costs whilst still acting in the interests of their own organisations.

14 It is the councils' responsibility to ensure members understand the information presented and that the impact of any decisions they are asked to make are both reasonable and appropriate.

15 Against that background, I comment on the arrangements the councils had in place:

- to take the decision to sell County Hall to Chester University;
- for securing valuations and demonstrating value for money;
- for reporting to members; and
- for consultation with the public.

Deciding to sell County Hall to Chester University

16 The pressure to complete the negotiations with the University quickly, alongside Cheshire West's need to secure alternative accommodation, influenced their decision making process. Cheshire West was instrumental in forming proposals for the sale of County Hall and providing momentum for the sale. During the early stages only a small group of officers and members were involved. Cheshire East were involved mainly through discussions between the Council leaders and Chief Executives. Cheshire East were not actively involved until the first written offer was received on 16 June 2009. Cheshire West officers briefly considered refurbishment options for County Hall. But, on 24 June 2009, secured a decision from members to sell to the University in principle subject to detailed negotiations. These were delegated to the Director of Resources in consultation with the Finance Portfolio Holder.

17 Completing such complex transactions in such a short timescale was a significant achievement which enabled both councils and the University to achieve their vision. Cheshire West has taken an early opportunity to assist the regeneration of the Chester. Cheshire East has benefited from the income from the sale and removed their ongoing liabilities for an asset they no longer needed.

18 Cheshire East adopted a different approach and took more time to take the decision to sell. Their approach allowed the Cabinet to consider additional expert valuation and legal advice before committing to the decision to sell. Cheshire East Cabinet received reports in July and August 2009 before taking the final decision to sell County Hall on 22 September 2009. This was subject to some final negotiations delegated to the Borough Treasurer and Head of Assets, the Borough Solicitor and the Portfolio Holder (Procurement, Assets and Shared Services).

19 Cheshire West's early decision secured the interest of the University in the sale and Cheshire East's approach provided additional checks and balances. Cheshire East's separate legal advice and property valuations helped to demonstrate that the sale represented value for money and that both councils could meet the requirements of s123, LGA 1972. I am satisfied that the decision making processes of the two councils, taken together, followed a reasonable process.

Valuations and value for money considerations

20 When councils dispose of property it is usually through a sale on the open market. Whilst this is not mandatory, it is considered to be the best way to demonstrate that they have secured best value. When the University's offer of £10.75 million was received in June 2009, time constraints meant that there was insufficient time to market the property. The Councils jointly obtained a valuation from the Valuation Office Agency (VOA) to support the contention that the University's offer represented best value.

21 The VOA valuation was £4 to 6 million which was markedly less than the University offer. The VOA report also commented on the lack of an overage clause in the University offer, a key safeguard normally included in sales of public sector assets. (Clawback/overage provides a safeguard in a contract to allow the councils to recover a share of any profit that the University might make from a future re-sale.) The report was received on 23 June 2009, a day before the decision by Cheshire West to proceed with the sale to the University. The report was not available when officers at Cheshire West prepared their report supporting the sale for the Members.

22 Officers assure me that a verbal update was given to Members but this is not evidenced in the minutes of the meeting - as it was a confidential Part B item. Similarly, I understand Counsel's interim advice, received in consultation, was reported to Members verbally. Again, there is no record in the minutes of the 24 June meeting to support this. Furthermore Counsel's written opinion was not received until 13 July 2009. These are crucial pieces of information to support Members' decision and judgement that the sale achieved best value. Their consideration by members should have been evidenced.

23 A second valuation was commissioned by Cheshire East. The value contained in that valuer's draft report was shared with Cheshire West officers on 26 June 2009. Although it was a significantly higher value (then £10.2 million) than the VOA report, Cheshire West continued to rely on the VOA report to support securing best value and did not make their Counsel aware of the second valuation. In my view Counsel should have been made aware of this higher valuation before he provided written advice on 13 July 2009. In any event, Counsel should have been asked to reaffirm or revise his opinion once the second valuer's final report, containing a value of £10.6 million, was received from Cheshire East. Cheshire West officers have told me that they did consider going back to Counsel and decided not to do so. Their legal team has stated that they formed the judgement that this was unnecessary. They believed there was enough evidence to support the decision that the sale, when it took place, was at a price which satisfied the requirements of section 123 of the Local Government Act.

24 Until September 2009 the deal with the University included a clause that would have given them first refusal over whether to buy Castle Square Car Park for £1 million, in the event that the councils wanted to sell it before 2017. In July 2009 Cheshire East sought its own valuation of the car park to help it to determine whether to sell its share to Cheshire West for £0.5 million. It was valued at £3.2 million. A later joint valuation valued it at £2.3 million. Cheshire West officers have said that there was no possibility of the car park being sold. However, had the clause not been removed the Council may have found it difficult to show how any future sale (before 2017) satisfied the requirements of section 123. I also note that both the VOA and Counsel acting for Cheshire West appear to have misunderstood that aspect of the deal.

25 Cheshire West offered to share legal advisors with Cheshire East but they declined. Cheshire West shared their Counsel's opinion with Cheshire East in July 2009. Cheshire East sought independent legal advice and commercial property valuations, particularly in relation to the sale of the Castle Square car park, at all stages through the process. These were not always shared with Cheshire West. (In some cases this was because the advice was sought by Cheshire East for specific purposes and it would not have been appropriate to share.

26 Given that County Hall was in the joint ownership of the two councils they should have taken a more joined up approach to the disposal. Had the two councils worked more closely together and shared documentation including specialist advice the issues may have been resolved more quickly and professional costs saved.

Reporting to Members

27 Responsibility for ensuring that they have effective governance arrangements in place rests separately with Cheshire West and Cheshire East councils. It is also their responsibility to put in place systems of internal control to ensure the regularity and lawfulness of their transactions.

28 Effective reporting arrangements are an important part of any organisation's governance arrangements. Good quality information and clear, objective advice can significantly reduce the risk of taking decisions that fail to achieve their objectives or have serious unintended results.

29 Between June and December 2009, officers from both councils presented reports and updates for members covering a wide range of issues. After confidential information was leaked, in June 2009, Cheshire West officers made some oral reports to limit written information available. However evidence to support their assertions that oral reports were given is limited. In my view, more evidence of what information was shared with members to help inform their decision-making is required in order to demonstrate effective governance.

30 In relation to Cheshire West's reporting to members and member scrutiny, written reports should have been more detailed and better supported. In some respects reporting appeared to lack balance. Some details contained in reports that were deemed to be commercially sensitive were disclosed to the local press. I have not considered matters relating to these leaks in this report.

31 Cheshire East could have done more to ensure that members who were not on its Cabinet were kept informed. While the Cabinet reports of July, August and September were available to other members no specific reports were shared with the full Council.

Consultation

32 The level of public consultation over the sale of County Hall was limited. Councils have a statutory duty to involve local people (set out in Section 138 of the Local Government and Public Involvement in Health Act 2007). This duty covers one-off decisions as well as routine functions. Section 138 allows councils to use their discretion where, for example, an asset is not used in front line service delivery.

33 Cheshire West officers considered that the statutory duty to involve did not apply as County Hall was not used to deliver services to the public. They also contend that any responsibility to consult applied to both councils as the asset was jointly owned. In fact neither council engaged in a formal consultation process before the decision was made to sell the asset. The decision to sell a major public asset such as County Hall is likely to generate concerns in the local community. Cheshire West should have consulted on its sale. The planning process allowed opportunity for consultation over change of use but that is different from the sale itself.

34 I acknowledge that some Cheshire West councillors arranged events and opportunities to engage with the public. For example, Chester Conservative Councillors hosted a public meeting on 24 August 2009; the Head of facilities and Asset management attended the City Community Forum on 21 September 2009. In addition Cheshire West Council provided some opportunity for public involvement. While these opportunities did provide a forum for public debate they did not take place until after the decision to sell was made.

35 It is for each council to decide what steps it considers appropriate to satisfy the requirements of s138. However Cheshire West should have anticipated the public reaction to the proposed sale. Consultation over major decisions is regarded as good practice. Both councils could have done more to involve local people in the decision.

36 A decision that parallels the sale of County Hall – and creates as much public interest - may not arise again for some time. However, both councils should remain open to involving local people early in decision-making processes. This will help avoid the risk of local people feeling disenfranchised.

Final comments

37 The issues set out in this report were initially shared with officers in July 2010. During 2010/11 both councils have introduced new procedures to enable members to have access to more detailed plans, reports and specialist advice where appropriate. For example:

- Cheshire West's redevelopment of Northgate where members can arrange, with the legal team, to see supporting papers. However to protect the commercial confidentiality of certain aspects of the project the details are not available for members to take away.
- Cheshire East Council now has a robust policy of engagement with non-Cabinet Members, primarily through regular consultation with Overview & Scrutiny Committees and Scrutiny Chairmen, but also through the involvement of individual Members in specific projects. The Council's Asset Challenge programme has involved detailed consultation with Members and has been the subject of regular updates to the Corporate Overview & Scrutiny Committee. Non-Cabinet members are included on the working group developing the strategy for the transfer of assets in accordance with the Council's agenda for local service delivery. The Council also regularly consults with local members in respect of its long term regeneration proposals for major centres such as Crewe, Macclesfield and Congleton.

38 During 2010 there are good examples of the progress the councils have made in working together. These include:

- the judicial review relating to the waste PFI contract. This is being done jointly with shared legal advisors;
- ongoing development and plans for the future of shared services; and
- agreement over the disaggregation of fixed assets without the need to go to arbitration, (subject to agreement by members in February 2011).

These examples demonstrate how both councils are taking action to address the issues raised by this report.

39 My recommendations are summarised in the agreed Action Plan at Appendix 1.

Detailed report

A brief history

40 Local government reorganisation in Cheshire took effect in April 2009. It replaced Cheshire County Council and six district councils with two new unitary councils:

- Cheshire West and Chester Council (Cheshire West); and
- Cheshire East Council (Cheshire East).

41 Properties owned by the former authorities transferred to one of the new councils or into joint ownership of Cheshire West and Cheshire East. Others were declared surplus to requirements. County Hall is in Chester and therefore within Cheshire West - it was one of the jointly owned properties. The Property Transfer Agreement, (dated 31 March 2009), records County Hall's capital value as £5 million as at April 2009. (Annual running costs estimated at £1.27 million.)

42 From April 2009 more than 500 Cheshire East employees continued to work at County Hall. But Cheshire East wanted to relocate those staff to offices within its own boundary during 2009/10. This would have left Cheshire West as the principal occupier of County Hall, with Cheshire East having to meet almost half of its running costs, despite no longer using the building.

43 Chester University apparently first expressed an interest in purchasing County Hall during March 2009. Cheshire West led the negotiations with the University during April and May. At that stage both councils had good reason to give the proposal serious consideration. In both cases the disposal of County Hall meant that the councils could move forward with their own asset management plans faster than would otherwise be possible.

- For Cheshire East it was also an opportunity to shed the £0.5 million annual costs of its residual interest in County Hall. They would receive no value against these costs once their staff moved out in February 2010.
- For Cheshire West it was an early opportunity to realise its preferred accommodation strategy and to support its wider ambitions for the new council.

44 It is clear from an early stage that Cheshire West's senior management believed that the Council's long term office accommodation should be modern and open-plan. They felt that modern and fit for purpose accommodation would help to speed up cultural change and improve efficiency. They also judged that County Hall, in its current state, failed to meet their requirements.

45 During this period Cheshire West identified the new HQ development as a suitable alternative site to County Hall, in the event that sale to the University went ahead. HQ is a new development close to County Hall. It includes 82,000 square feet of open-plan office space on six floors, residential apartments and a hotel.

46 Between May and October 2009 the two councils negotiated the sale of County Hall to Chester University for £10.3 million.

47 This detailed report considers the involvement of both councils in the sale of County Hall. It covers:

- the decision to sell County Hall to Chester University;
- securing valuations and value for money;
- reporting to members; and
- consultation with the public.

Deciding to sell County Hall to Chester University

48 This section of the report considers:

- initial discussions with Chester University; and
- consideration of options for County Hall.

49 County Hall was one of the assets shared with Cheshire East as part of the Property Transfer Agreement signed as part of the local government re-organisation process. To that end each council had a 50 per cent stake in the value and its management. Given that the building is in Chester its future use was always going to be directed by Cheshire West - with the agreement of Cheshire East.

50 Cheshire West officers say that the University Vice-Chancellor first expressed an interest in County Hall in March 2009, although it is unclear when or to whom that approach was made. A local agent acting for the University then entered into discussions with Cheshire West's Head of Facilities and Asset Management, who led negotiations for both councils, before making a written offer for County Hall on 21 May 2009. During this phase only a small group of officers and members were aware of these discussions. Cheshire East was kept informed of developments through communication at Chief Executive and member levels. Information was also shared with Cheshire East's Assets Manager.

51 On 16 June 2009 the University's agent presented Heads of Terms to Cheshire West's Head of Facilities and Asset Management based upon:

- a price of £10.75 million for County Hall (including its Riverside Car Park and Annexe), the Lower Car Park and a ten year lease of 70 spaces on Castle Square Car Park;
- an option to buy Castle Square Car Park for £1 million in the event that the councils should decide to sell their freehold interest before June 2017. Cheshire West officers have stressed that there was no intention to sell Castle Square to the University at any stage and that their over-riding objective was to secure the best price - then £10.75 million - for assets in the main part of the deal; and

- exchange of contracts on or before 30 June 2009.

52 Cheshire East became actively involved after this first written offer was received. Pressure for a prompt exchange of contracts and for the councils to effect a staged withdrawal from County Hall by June 2010 was linked to the University's desire to be in-situ for the 2010/11 academic year. The University stated that failure to meet this timescale would lead it to withdraw its offer and pursue other options. A swift sale was also attractive to Cheshire West because it wanted to complete the purchase of HQ and accelerate its organisational development. Cheshire East was attracted to an early sale to curtail its liability for County Hall costs and to progress its wider asset management strategy.

53 Cheshire West's assessment of County Hall was that it was not capable of providing modern, open-plan office accommodation without major capital investment. In his 24 June 2009 report to the Executive the Head of Facilities & Asset Management stated that:

The sale of County Hall will mean that modern, efficient and effective accommodation can be sought for Cheshire West and Chester that will drive forward the transformation of the organisation.

54 The report goes on to discuss the option of refurbishing County Hall and sets out the likely costs. During the transitional period Cheshire County Council commissioned some work to examine how County Hall could be re-designed to make it into modern office accommodation. The report states that:

- it would cost in the region of £12 million - £15 million;
- Cheshire West would need to pay Cheshire East for its share of the building; and
- it would take a minimum of 3 years to develop.

55 The report also goes on to comment upon the wider opportunities the sale of County Hall represents. For example:

- enabling significant cultural change to happen more quickly and with it greater efficiencies in terms of identity and costs;
- to establish the University giving it a city centre presence and a positive position within the sector; and
- as a catalyst for the Council to rationalise its city centre presence and perhaps dispose of other accommodation earlier.

56 Cheshire West officers had held tentative discussions with local agents about County Hall's development potential in early 2009. The 24 June report to the Executive states that:

Opportunities for sale were discussed with Cheshire East, national commercial agents, known developers and some hotel operators, including Hilton, over the past few months. Some tentative interest was shown but deliverability, timescale and even values were at best uncertain.

57 That conclusion was supported when a valuer, who was engaged at a later stage by Cheshire East, advised that:

....sale to a developer is seen as extremely unlikely in the current climate....the market for the property is therefore considered extremely thin....

58 It is clear from 24 June 2009 Executive report that Cheshire West gave some consideration to the costs of remaining in County Hall before asking members to make the decision to sell. These included complete refurbishment of County Hall for continued use as headquarters for the Council. The Council's option appraisal process is considered in more detail in our separate report to Cheshire West Council on its purchase of HQ.

59 On 24 June 2009 Cheshire West's Executive agreed the sale of County Hall to Chester University 'under the broad terms outlined in the report'. Council officers believe this early decision was a necessary signal of intent to provide reassurance to the University. The approval was still subject to detailed negotiations, responsibility for which was delegated to the Director of Resources in consultation with the Finance Portfolio Holder.

60 In July 2009 Cheshire East's Cabinet agreed in principle:

.... that there may be merit in the sale of County Hall. However, considerable further effort needs to be made in order to satisfy them that their obligation under Section 123 of the Local Government Act 1972 will be met if the current offer is accepted.

They did not approve the sale until 22 September 2009. Like Cheshire West, their approval was subject to final negotiations delegated to the Borough Treasurer and Head of Assets, the Borough Solicitor and the Portfolio Holder (Procurement Assets and Shared Services).

61 Following negotiations between the two councils and the University the sale was agreed in October 2009. Before taking the final decision Cheshire East officers took further valuation and legal advice. Cheshire West officers continued to rely on the delegated authority from 24 June 2009. More details of the final agreement are set out in paragraphs 99 to 104.

Conclusions

62 The opportunity to sell County Hall came much earlier than either council expected. It represented a good opportunity for them to review their accommodation strategies at an early stage. For Cheshire East it also represented significant income and the opportunity to reduce their ongoing liability for the building after their staff had moved out.

63 The pressure to complete the negotiations with the University quickly, alongside Cheshire West's need to secure alternative accommodation influenced the decision making process. Cheshire West members took the decision to sell on 24 June 2009. Cheshire East members adopted a different approach taking time to consider expert valuation and legal advice before committing to the decision to sell in September 2009. Taken together the Councils adopted a reasonable process setting aside the initial ambitious timescales to ensure good decisions were made.

Valuations and value for money considerations

64 This section of the report considers the approach of both councils to:

- valuing County Hall;
- ensuring their decisions represented value for money; and
- making effective use of legal and valuation experts.

65 County Hall was valued at £5 million for the purposes of local government reorganisation. This was based on a valuation provided by the Valuation Office Agency (VOA) in October 2008.

66 Section 123 of the Local Government Act 1972 permits local authorities to dispose of property in any manner they wish, subject to a requirement to secure the best consideration that can reasonably be obtained. Any disposal for less than best consideration must be within the terms of the Local Government Act 1972: General Disposal Consent (England) 2003 or be the subject of a specific consent by the Secretary of State. Marketing a property for sale is not a legal requirement. However it is usually key to demonstrating best consideration. Particular care is required where a property is disposed of without marketing. In summary, councils need to be able to show that they consider value for money issues when taking decisions.

67 County Hall was not on the market when the University's £10.75 million offer was received. When the formal offer was made in June 2009, timing constraints also meant there was no time to market the property. Taken together these two issues led Cheshire West and Cheshire East councils to seek a joint updated valuation from the VOA (on 5 June 2009). In addition, Cheshire East acted alone in seeking a second valuation from a private sector valuer on 9 June 2009 'to give a 'commercial' perspective on the value'.

68 The VOA's valuation report was dated 23 June 2009 - the day before Cheshire West members were due to consider the proposal to sell County Hall. The VOA concluded:

- in respect of market value:

"in my opinion, the property has a current market value of between £4 million and £6 million"; and

- with regard to the University's offer:

"The only concern is that the transaction has no provision for overage/clawback..... I would strongly recommend that any sale incorporates claw back provisions covering recovery of a share of any 'profit' made on onward sale.... In the event that reasonable clawback provisions can be agreed with the purchaser....we are willing to report that this is a satisfactory transaction for the Council to enter into and that 'best consideration' has been achieved in accordance with Section 123, Local Government Act 1972."

69 The VOA report also says "I understand that... the 'put option' has now been removed and replaced by a right of pre-emption and any sale must be at market value at the time of the sale". The reference to market value was an incorrect understanding of the pre-emption clause, which would have entitled the University to purchase Castle Square Car Park for £1 million, without reference to its then market value, in the event that the councils decided to sell it.

70 The terms of the University's offer for County Hall were reported to Cheshire West's Executive on 24 June 2009. The report by the Head of Facilities & Asset Management was drafted before the VOA's final valuation was received on 23 June and was not then supported by written legal advice. There is no evidence that the VOA advice was provided at the meeting. Legal advice obtained from Counsel in conference was apparently reported verbally, but the Minutes contain no reference to it.

71 The VOA's conclusion regarding best consideration was a key element of officers' recommendation to the Executive that it should approve the sale. The officers' written report made no reference to clawback or overage, despite the VOA 'strongly recommending' that any sale include clawback provisions, nor do Minutes of the meeting record it being discussed. (Clawback/overage provides a safeguard in a contract to allow the councils to recover a share of any profit that the University might make from a future re-sale.)

72 On 24 June 2009, Cheshire West's Executive decided that:

"the disposal of County Hall to Chester University under the broad terms outlined in the report be agreed

the Director of Resources, in consultation with the Finance Portfolio Holder be given delegated authority to agree other terms, finalise details of the transaction and complete the sale."

73 The terms then included:

- a price of £10.75 million for County Hall (including its Riverside Car Park and Annexe), the Lower Car Park and a ten year lease of 70 spaces on Castle Square Car Park; and
- a £1 million option for the University to buy Castle Square Car Park should it be offered for sale within seven years.

74 The Executive report also outlined Cheshire West's intention to buy-out Cheshire East's interest in Castle Square Car Park for £0.5 million. During this review, Cheshire West officers have stressed that, by June 2009, there was no intention to sell Castle Square Car Park to the University. Their intention being to turn the square into public open space at some stage in the future. Cheshire West's objective throughout was to secure the best price for assets in the main part of the deal. Regardless of the notional apportionment between the Car Park and County Hall, Cheshire East would have received half the value of the whole site.

75 As stated previously, Cheshire West officers believe this early decision was a necessary signal of intent to provide reassurance to the University. The decision was, however, taken without final written legal advice being available to members.

76 On 26 June 2009 Cheshire East received a draft report from its commercial valuer. This valued County Hall at £10.2 million - £4.2 million above the VOA's reported range, and £550,000 below the University's offer. Cheshire West were made aware of this valuation on 26 June (two days after the Executive decision to sell), when officers from both councils met to clarify issues regarding the University's offer and to consider a way forward.

77 Both councils sought separate independent legal advice on the terms of the sale and compliance with Section 123 of the Local Government Act 1972. I understand that Cheshire West proposed that the councils should share legal experts, but that Cheshire East declined to do so on 11 June 2009.

78 Counsel's opinion obtained by Cheshire East on 10 July 2009 raised numerous issues in light of the VOA report and commercial valuer's draft report, concluding that:

The Council cannot be satisfied on the current evidence that the proposed sale of their interests in County Hall and the car park would result in their obtaining a consideration for those interests which is the best that can reasonably be obtained.

It was not shared with Cheshire West.

79 Counsel's opinion obtained by Cheshire West, dated 13 July 2009, stated that:

- Cheshire West could obtain an expert assessment of the open market value of County Hall without actually putting the property on the market;
- in respect of the VOA report, "the value is said to lie within a range of between £4 million and £6 million, figures which lie well below the bid of £10.75 million from the University of Chester"; and
- the councils should follow the VOA advice in respect of clawback.

80 Counsel acting for Cheshire West's overall conclusion was:

"that if the councils follow (VOA) advice there is little risk of a legal challenge to the proposed disposal succeeding on the grounds of non-compliance with section 123(2) of the 1972 Act."

81 That Counsel's opinion made no reference to the second valuation of County Hall being obtained by Cheshire East. Although still in draft, it was known by Cheshire West officers to include a significantly higher valuation more than two weeks prior to Counsel's opinion being finalised. In my view Cheshire West officers should have alerted Counsel to the existence of Cheshire East's markedly different valuation or ensured his advice was revisited or reaffirmed at a later stage. Cheshire West officers have told me that they did consider going back to Counsel and decided not to do so. Their legal team has stated that they formed the judgement that this was unnecessary. They believed there was enough evidence to support the decision that the sale, when it took place, was at a price which satisfied the requirements of section 123 of the Local Government Act, and that further advice would not be necessary, as value for money criteria had been satisfied.

82 Some elements of Counsel's advice to Cheshire West were anticipated in the 24 June 2009 report to its Executive, based on discussions to that point in time. However, the fact that Counsel's opinion was not received until 13 July 2009 meant that officers could not reflect all aspects of his advice in the report or at the meeting. For example, Counsel's opinion stated that:

- "The decision-making body within each of the Councils will need to consider the merits of making a decision to dispose of the land now" (ie as opposed for waiting for the property market to improve). Counsel did not suggest that this consideration presented any legal obstacle to sale. However, the fact remains that the decision on 24 June was taken without Cheshire West members actively considering a relevant consideration identified by Counsel;
- "the officer's report to Committee would be able to explain why it would not be sensible for CWCC to seek to occupy the whole of County Hall, because that would necessitate relocating staff from other premises in the City who are, and could remain, suitably accommodated elsewhere." In this instance, it is unclear how Counsel's understanding of the case for sale reconciles with that made in the 24 June 2009 Executive report ("Moving from County Hall would be a catalyst for the Council to rationalise their city centre presence and perhaps realise other receipts earlier"); and
- "The proposed transaction would also include the grant of a right of pre-emption enabling the University to purchase the freehold of Castle Square at market value at the time of sale." Again the reference to market value was an incorrect understanding of the pre-emption clause, which entitled the University to purchase the car park for £1 million, without reference to its then market value, in the event that the councils decided to sell (see paragraph 69).

83 These matters were not revisited after the 24 June 2009 decision to sell County Hall. However, had the pre-emption clause been retained the councils might have found it difficult to satisfy the requirements of s123 if they had sold Castle Square before July 2017. Cheshire West shared its Counsel's opinion with Cheshire East on 20 July 2009.

84 In contrast to Cheshire West Executive's earlier decision, Cheshire East Cabinet took more time to consider the additional legal and valuation advice available to them. On 14 July 2009 an officer report to Cheshire East Cabinet recommended the sale of County Hall to the University and transfer of Castle Square Car Park to Cheshire West. The report was written before Counsel's advice was received on 10 July. However, the Cabinet considered the Counsel's opinion, which was circulated prior to the meeting, and agreed in principle to a sale:

- resolving that 'considerable further effort' was required to satisfy them that Section 123 of the Local Government Act would be met by accepting the current offer from the University; and

- requesting detailed advice about the timing of a sale (given the downturn in the property market) to help them decide if County Hall should be marketed.

85 On 22 July 2009 Cheshire East received the final report on the commercial valuation of County Hall. This second valuation was used to supplement the jointly commissioned VOA report received on 23 June. The final commercial valuation was £10.6 million, marginally below the University's offer. Unlike the VOA report, the commercial valuer did not provide a view on whether the University's offer represented best consideration. But they did provide assurance about the reasonableness of proceeding with the sale in the context of the downturn in the property market. In late August, (or early September), the report was shared with Cheshire West who were reassured that, notwithstanding the substantial difference from the VOA figure, it provided further evidence that the then deal with the University was reasonable.

86 On 23 July 2009 Cheshire East also received a separate valuation of Castle Square Car Park to help it determine whether to sell its share to Cheshire West for £0.5 million. The report, by the same private sector valuer who produced the second County Hall report, valued the car park at £3.2 million 'based upon the existing use of Castle Square as a car park'. Based on that figure Cheshire East's share would be worth £1.6 million. When presented with this valuation Cheshire West withdrew its offer to buy Cheshire East's share of the car park.

87 Cheshire East asked for a second Counsel's opinion. Having considered the final commercial valuation report and supporting information Counsel concluded on 27 July 2009 that:

- subject to securing a suitable overage clause, the University's offer of £10.75 million represented best consideration for County Hall. Counsel's earlier concerns, which included the reasonableness of the timing of the proposed sale, had been mitigated; and
- in light of the marked difference between the £0.5 million offered for Castle Square Car Park and the £1.6 million implied by the private sector valuer, the Car Park transfer should be separated out from the County Hall deal.

88 Cheshire East Cabinet approved County Hall for disposal on 11 August 2009, but still conditional upon:

- officers securing an overage provision; and
- Castle Square Car Park being separated out from the main sale and subject to further valuation.

89 The two councils jointly commissioned another valuation of the car park by a different private sector valuer. In September 2009 the car park was valued at £2.3 million on the assumption that "the property is for surface car parking and that public car parking on a charging basis would be permitted. Should this not be the case, then this would have a material impact on the valuation of the site".

90 At that stage, the valuations for the car park ranged from £2.3 million to £3.2 million - compared to:

- the £1 million pre-emption value then incorporated in the deal with the University; and
- the £0.5 million offered by Cheshire West to buy-out Cheshire East's interest. This was separate to negotiations with the University and would have been a distinct transaction between the two councils, reflecting Cheshire West's then intention to retain Castle Square for the long term as public open space.

91 During September 2009 the issues surrounding the valuation of the car park and its proposed inclusion in the sale of County Hall led to its removal from the deal. Cheshire West did not buy-out Cheshire East's interest and Castle Square Car Park remains in the joint ownership of both councils. The pre-emption clause was also removed from the deal with the University.

92 Cheshire West officers have told me that, other than in the very early stages of the negotiations, they had no intention of selling Castle Square Car Park (paragraph 74). However, had the clause not been removed the Council may have found it difficult to show how any future sale (before 2017) satisfied the requirements of section 123. I also note that both the VOA and Counsel acting for Cheshire West appear to have misunderstood this aspect of the deal.

93 Withdrawal of the ten year lease of parking spaces on Castle Square and of the right of pre-emption for the University to purchase the Car Park prompted the University to reduce its offer to £10 million. While that still exceeded the VOA valuation, it was now less than the commercial valuation of County Hall at £10.6 million, calling into question whether the new offer represented best consideration.

94 Cheshire West's view was that best consideration would still be achieved because the VOA valuation was at most £6 million and the Council had legal advice that it could rely upon the VOA's report. I have already said that I think the Council should have made Counsel aware of the alternative valuation obtained by Cheshire East once they became aware of it on 26 June. I am not qualified to make a judgement on which of the VOA and private sector valuations is most reliable, but I do think there were grounds for more caution. My view is reinforced by:

- the opinion expressed by Counsel to Cheshire East that "Chester University is not a commercial organisation. It is likely that Chester University will have applied for some form of grant funding for this purchase, and that either they, or the funder (or both) have received advice that the site is worth at least the amount they have offered";
- the University's subsequent public statement that it "bought County Hall in Chester for what has been professionally estimated to be the current market value" [i.e. £10.3 million]; and

- Cheshire West's own statement that "In those negotiations [with the University] a value in the region of £11m was sought as an initial target identified as being a value that the council would consider from our own professional teams. This was based upon our own internal assessment of the market place and other opportunities."

95 Cheshire East continued to consider the car park issue. Their re-negotiations with the University resulted in a revised offer of £10.3 million based on a longer, 33 year lease of 70 car park spaces on Castle Square Car Park. That was less than the £10.75 million offer that Cheshire West had negotiated for a shorter ten year lease. However, the pre-emption right over Castle Square Car Park had also been withdrawn.

96 Cheshire East Cabinet received a third report from its officers on 22 September 2009. This report provided Cheshire East members with assurance that the revised deal represented best consideration. They agreed to the sale.

97 If, as Cheshire West have stated, there was no possibility that the Car Park would be sold to the University, then the revised deal negotiated by Cheshire East was arguably not as good as that negotiated previously by Cheshire West. However, the University may have attached some value to the pre-emption right to purchase the Car Park at less than market value in the future, however remote that possibility might have been. On 25 September Cheshire East officers requested a further report from private sector valuers to confirm that £10.3 million represented the market value of the assets in the revised deal. That was received on 6 October and stated that "We are of the opinion that the consideration of £10,300,000.... represents market value of the asset as at the relevant valuation date".

98 Cheshire West officers continued to rely upon the Executive approval granted on 24 June 2009. It is understood that the Council leader and deputy leader received regular briefings throughout the sale process, but there was no reference back to the Executive and no formal record of these discussions.

99 One final complication arose in late October 2009 as the deal moved towards completion. A condition of grant funding sought by the University to help fund the purchase, meant that it requested that the sale take place in two stages.

- Stage One - the sale of County Hall for £8.275 million, to take place by 30 October 2009. This would enable Cheshire West to complete on the HQ transaction at that date.
- Stage Two - the option to purchase the County Hall Annexe and the Riverside and Lower Car Parks for £2 million during December 2009.

100 The councils obtained verbal confirmation from the North West Development Agency that the grant funding situation was as the University had outlined and that its application was likely to be successful. However, no written assurance was forthcoming. Instead the councils sought to mitigate the risk introduced by the staged sale in three other ways.

- The £8.275 million payable for Stage One ensured that the University overpaid for the assets in question, giving it an incentive to complete on Stage Two to redress the balance.
- Car parking and access, which the University would need to make County Hall viable, were included in Stage Two to provide a further incentive for completion.
- Assets included in Stage Two were capable of being developed independently by the councils in the event that the University should not complete.

101 Before agreeing to the staged sale Cheshire East obtained:

- a final valuation from commercial valuers - stage one assets were valued at £7.6 million - stage two assets valued at £3 million; and
- a third Counsel's opinion to test that the staged sale did not compromise the achievement of best consideration.

102 The final deal contained an overage provision, consistent with the VOA's recommendation and both councils' legal advice. Cheshire West's officers were satisfied that the risk of the University selling-on County Hall was low, but still negotiated an overage clause that would have entitled the councils to a tapering percentage of any 'profit' realised by the University if it re-sold County Hall within ten years - reducing from 100 per cent in 2010 to 10 per cent in 2019. Cheshire East were concerned to secure an increased percentage in later years and so negotiated a revised clause which entitles the councils to 50 per cent of any profit (25 per cent each) that the University might realise should it sell County Hall within 15 years.

103 Under the terms of the deal the councils:

- paid rent of £40,000 per month to the University for the remainder of their occupation of County Hall, reducing as they effected a staged vacation; and
- would have incurred a penalty of £37,500 per week in the event that they failed to adhere to agreed milestones for a phased handover, but those milestones were met and no charge levied.

104 Both stages of the sale of County Hall were completed - the first on 30 October and the second on 4 December 2009. A combined capital receipt of £10.275 million was shared between Cheshire West and Cheshire East. The final £25,000 followed in 2010 once other legal requirements had been fulfilled.

Conclusions

105 The University initially targeted exchange of contracts by the end of June 2009. The councils appear to have, together, followed a reasonable and proper process to satisfy themselves that the sale represented best consideration (under s123 of the LGA 1972). However the approach taken by the two councils was quite different.

106 For Cheshire West, I have some concerns regarding:

- how it handled aspects of its own legal advice;
- its continued reliance upon the VOA valuation of County Hall in the knowledge that there was a second, markedly different valuation available; and
- its handling of certain matters in respect of Castle Square Car Park.

107 Cheshire East took a more measured approach to the decision to sell County Hall. Their referrals for further legal advice and commercial property valuations incurred some additional costs. But, their more measured approach helped to demonstrate that, together, the councils followed a reasonable process to eventually satisfy themselves that the sale of County Hall represented value for money for council tax payers and met their obligations under s123, LGA 1972.

108 The councils jointly commissioned the VOA valuation and some other documentation was shared, such as Cheshire West's Counsel's opinion and, eventually, the second valuation report obtained by Cheshire East. However, the councils could have worked together more closely had they agreed to share legal and other expert advice where appropriate. Given that County Hall was in the joint ownership of the two councils they should have taken a more joined up approach to the disposal - despite the fact that they had different drivers for the sale. This may have led to quicker resolution of issues and reduced overall costs in terms of staff time and specialist advice.

109 The sale was one of the first high profile decisions taken by the councils. Both councils must now reflect on their experience of the sale of County Hall and learn any lessons. This will be important for the ongoing rationalisation of their property portfolios whether jointly owned or not.

Recommendation

- R1** Cheshire West should ensure that legal and other advice is obtained on a timely basis. This advice should be properly considered and used to support and inform member decision-making.
- R2** Both Councils should consider sharing specialist advice where appropriate in the future.
- R3** Both councils should review the approach to the sale of County Hall to identify any lessons that can be learned for future decision-making and the ongoing rationalisation of their property portfolios.
-

Reporting to members

110 This section of the report considers:

- the importance of effective governance arrangements;
- how key roles and responsibilities were discharged; and
- the effectiveness of reporting to Cheshire West and Cheshire East councils.

111 Responsibility for ensuring that they have effective governance arrangements in place rests with Cheshire West and Cheshire East councils. It is also their responsibility to put in place systems of internal control to ensure the regularity and lawfulness of their transactions.

112 The Audit Commission defines corporate governance as:

the framework of accountability, to users, stakeholders and the wider community, within which organisations take decisions and lead and control their functions to achieve their objectives.

Cheshire West

113 The proposed sale of County Hall and acquisition of HQ were first reported to Cheshire West's Executive on 24 June 2009. The two transactions were covered by separate reports. Both reports were considered in the private part of the meeting because of their commercial confidentiality. This is common practice in local authorities and in accordance with the Local Government Act 1972.

114 Although the reports were rightly restricted and considered in private session, due to commercial confidentiality considerations, details of both transactions featured in the Chester Chronicle on 25 June 2009. The article began "Key players were last night discussing secret plans to sell County Hall to Chester University for an estimated £10 million with council staff relocating to the new HQ building across the road." If this release of restricted information was attributable to a councillor, it could constitute a breach of the Code of Conduct for Members (set out in Cheshire West's Constitution). Cheshire West has not investigated this 'leak' and it has not been considered as part of this review.

115 The reports presented to the Executive on 24 June 2009 were brief. This is perhaps surprising given their significance. The report relating to the proposed sale of County Hall makes a number of unduly positive statements. These statements were not always supported by the evidence available and suggest that the preparatory work was not as thorough as it should have been.

For example, the report:

- states that "This sale will also represent excellent value for money at the price of £10.75m". The VOA's report actually states that "In the absence of the property being offered for sale on the open market, it is not possible for us to state absolutely that this is the 'best price reasonably obtainable'. We can, however, confirm that.... in our opinion the consideration is not likely to be significantly exceeded in a disposal to any other purchaser". (Although not then known to officers of Cheshire West, the second valuation commissioned by Cheshire East subsequently also showed the position to be less clear-cut.) The VOA also stated that the deal represented best consideration provided that reasonable clawback/overage provisions are agreed. The VOA's report was available before the Executive met however the overage issue is not referred to in the minutes, although we are told that it was included in a verbal update;
- states that "It would be worth paying Cheshire East £500,000 to acquire sole ownership (of Castle Square Car Park)". The car park was subsequently valued at £3.2m and £2.3m by two independent valuers (paragraphs 86 and 89); and
- refers to both councils benefiting from "a rent free period of about 10 months". The University was then expected to pay only a five percent deposit, with completion in summer 2010. In that context, the benefits of a rent free period appear to be over stated.

116 On 24 June 2009 Cheshire West's Executive agreed:

- the disposal of County Hall to Chester University under the broad terms outlined in the report; and
- the Director of Resources in consultation with the Finance Portfolio Holder be given delegated authority to agree other terms, finalise details of the transaction and complete the sale.

117 Following the Executive decision of 24 June 2009 there were a number of other briefings and associated reports to Cheshire West members relating to County Hall and HQ.

- The Council leader and deputy leader received regular updates as part of their weekly briefings.
- Officers provided briefings to the Labour and Liberal Democrat groups during July 2009.
- "New Office Accommodation" was voluntarily included on the agenda for the first meeting of the Cheshire West's Corporate Select Panel on 13 July. The Panel's terms of reference include:

....review and scrutinise the Council and the Executive's work ensuring that the Council is using its resources effectively....

- The Panel considered both County Hall and HQ. But this was again in closed session and no agenda papers were prepared in view of the earlier leak. The minutes record that:

The Corporate Select Panel support the decisions made by the Executive in relation to the future use of County Hall and new office accommodation, subject to receipt of detailed financial information supporting the move.

- At the Full Council meeting on 23 July an opposition motion relating to the sale of County Hall was referred without debate to the Executive (where it was discussed on 17 September). However, the Council Leader answered questions from Labour and Liberal Democrat councillors in relation to County Hall and HQ.
- A second opposition motion, requesting that the earlier decisions to sell County Hall and purchase HQ be revisited and subject to public consultation, was discussed in Full Council on 23 September. The motion was defeated by 47 to 12 with 3 abstentions.
- On 29 October, the day before the sale of County Hall was completed, an Officer Decision Notice was signed by the Chief Executive. This was needed because of the staged sale of County Hall agreed in late October. Because the contracts had to be signed by 30 October, the issue could not be referred back to the Executive at its next meeting on 4 November. The Decision Notice outlined changes to the deal since 24 June 2009, including the overage clause. It also included a brief reference to the second valuation obtained by Cheshire East, without citing any figures. It was counter-signed by the Council Leader and Chairman of Overview and Scrutiny Committee and agreed, by email, by the Portfolio Holder for Finance. The Notice required that a report of the decision be made available to all Council members.

118 Cheshire West officers have explained that they had expected to report back formally to the Executive in July 2009 once the deal had been agreed. But the negotiations did not proceed smoothly. Faced with the unexpected delays and the need for commercial confidentiality following the earlier leak, it was not until December 2009 that the full facts were reported back to the Executive. On 9 December the Executive received a report entitled Progress on property rationalisation. This report was considered in the public part of the meeting and outlined the final terms of the completed transactions for County Hall.

Cheshire East

119 The first report to Cheshire East's Cabinet on the proposed sale of County Hall was on 14 July 2009. While quite brief, it is balanced and refers to the risks associated with the timing of a sale during a down turn. It also refers to the need to include an overage/clawback provision in the terms of sale. The timing of their report meant that it reflected the VOA valuation report and their commercial valuer's draft report. Before the meeting officers sought Counsel's advice on the issue of achieving best consideration. Officers briefed members on that advice during the meeting. Having considered the facts in the report and the Counsel's advice the Cabinet:

- Agreed in principle that there may be merit in the sale of County Hall. However, considerable further effort needed to be made in order to satisfy them that their obligation under Section 123 of the Local Government Act 1972 would be met if the current offer was accepted.
- Concluded that in order to progress the sale Members considered that it may be necessary to market the property, to satisfy their legal obligations under Section 123. In order to assist Members officers were asked to secure detailed advice about the timing of a sale.

120 Cheshire East Cabinet received a second, more detailed report on 11 August. This report summarised the final VOA and commercial valuation reports, alongside Cheshire East's second Counsel's opinion. It also specifically considered the timing of any sale in the context of the property market. Cabinet agreed:

- that negotiations for the potential sale of County Hall to Chester University should proceed subject to the inclusion of an overage provision;
- that the possible transfer of the Council's interest in Castle Square Car Park be dealt with as a separate transaction;
- that an independent valuation of the car park be obtained jointly with Cheshire West and Chester Borough Council; and
- to delegate the further negotiations for both transactions to the Borough Treasurer and Head of Assets and the Borough Solicitor in consultation with the Leader of the Council.

121 A third report was considered by the Cabinet, as a matter of urgent business, on 22 September 2009. This report dealt with the complications arising from the separate valuation of Castle Square Car Park.

122 Whilst Cheshire East's Cabinet members did receive those regular, formal reports, more could have been done to keep other members abreast of developments.

123 In common with Cheshire West, the timing of the next Cabinet meeting on 3 November meant that an Urgent Decision record was required when the staged sale issue arose in late October. Cheshire East officers took final legal and valuation advice before drafting the decision notice. The notice was signed by the Chief Executive and copied to leading members, before being made available to all members of the Council.

Conclusions

124 In any fast moving situation it is inevitable that decisions need to be made quickly. It will not always be possible to align receipt of specialist advice and/or decision-making with formal meetings. In such circumstances it remains important that effective arrangements are put in place to update and report back through a council's formal decision-making processes.

125 It is the councils' responsibility to ensure members understand the information presented and that the impact of any decisions they are asked to make are both reasonable and appropriate.

126 Effective reporting arrangements are an important part of any organisations' governance arrangements. Good quality information and clear, objective advice can significantly reduce the risk of taking decisions that fail to achieve their objectives or have serious unintended results. Between June and December 2009, officers from both councils presented reports and updates for members covering a wide range of issues. After the leak, in June 2009, Cheshire West officers made some oral reports to limit written information available.

127 In relation to Cheshire West's reporting to members and member scrutiny, written reports should have been more detailed and better supported. In some respects reporting appeared to lack balance. Some details contained in reports that were deemed to be commercially sensitive were disclosed to the local press.

128 Cheshire East could have done more to ensure that members who were not on its Cabinet were kept informed.

Recommendation

R4 Remind Cheshire West members of the requirements of the Code of Conduct in relation to disclosure of information.

R5 Cheshire West should ensure that reports relating to key decisions provide sufficient detail and are balanced in their consideration of issues.

Consultation

129 This section of the report considers:

- the overall duty for local authorities to involve local people; and
- the approach to consultation taken in relation to the sale of County Hall.

130 The 'statutory duty to involve' arises from Section 138 of the Local Government and Public Involvement in Health Act 2007 which states that:

Where a best value authority considers it appropriate for representatives of local persons... to be involved in the exercise of any of its functions by being:

(a) provided with information about the exercise of the function,

(b) consulted about the exercise of the function, or

(c) involved in another way,

it must take such steps as it considers appropriate to secure that such representatives are involved in the exercise of the function in that way.

131 The duty is meant to cover significant one-off decisions as well as routine functions. Cheshire West officers have suggested that because County Hall was jointly owned, any obligation to consult over its sale would apply equally to both councils. In fact neither council consulted formally on the decision to sell County Hall. Whilst that might have been appropriate for Cheshire East, it appears less so for Cheshire West because County Hall (a well known civic landmark) is located in the Council's area and its continued use into the future was an option for that Council.

132 Some opposition councillors and members of the public complained of a lack of consultation about Cheshire West's decisions to purchase HQ and sell County Hall. They drew attention to the Council's Corporate Asset Management Plan 2009/2011 which states:

"From April 2009 a new statutory duty to involve will require local authorities and others to inform, consult and involve local people in their functions and activities, including asset management."

133 Cheshire West should have anticipated the public reaction to the sale of County Hall. The decision to sell a major civic asset is always likely to generate concerns within the local community.

134 Cheshire West officers did not see the need to consult over the sale of County Hall. Section 138 affords councils that discretion where an asset is not used for delivering front line services. However, consultation over major decisions is regarded as good practice. Councils who perform well in this area consult on key spending decisions where appropriate.

135 However, there were some opportunities for public involvement. For example:

- Chester Conservative Councillors hosted a public meeting on 24 August 2009 'concerning the university plans for county hall'. The Council Leader and the University Vice-Chancellor answered questions at the meeting.
- On 21 September 2009 the Head of facilities and Asset management attended the City Community Forum. He presented on the relocation of the council's headquarters.
- The University's planning application for County Hall to be used as a non-residential institution generated almost 100 letters of objection. That consultation over the University's proposed change of use of County Hall was, however, distinct from the Council's decision to sell.
- Members of the public took the opportunity to address the Council at its meeting on 23 September 2009.
- But other such opportunities afforded by the Council were not taken up. For example, at the Executive meeting on 17 September 2009 no member of the public took the opportunity to ask questions. Likewise no questions were asked at the full council meeting on 23 July 2009.

136 However, in each case the opportunities for the public to ask questions came after Cheshire West Executive had decided to sell County Hall and acquire HQ. There was no opportunity for public involvement before those decisions were taken. Also, had the sale proceeded to the expected timescale it would have been complete before the planning process took place and before some of those other opportunities were offered.

Conclusions

137 A decision that parallels the sale of County Hall – and creates as much public interest - may not arise again for some time. However, both councils should remain open to involving local people early in decision-making processes. This will help avoid of the risk of local people feeling disenfranchised.

Recommendation

R6 Each Council's Consultation Strategy should include proper consideration of circumstances where they will consult and involve local people in meaningful ways.

Appendix 1 Action Plan

Recommendations

Recommendation 1

Cheshire West should ensure that legal and other advice is obtained on a timely basis. This advice should be properly considered and used to support and inform member decision-making.

Responsibility	Head of Legal and Democratic Services
Priority	High
Date	Implemented
Comments	This advice was taken in this instance, and for all major decisions, and is always factored into decision making processes on timely basis as part of the project plan. Whilst in this instance it was not documented in written reports to members but updated verbally, both in the Executive and with appropriate members in terms of the delegation, should such fast moving circumstances occur in the future, written records of this will be maintained on file.

Recommendation 2

Cheshire West should consider sharing specialist advice where appropriate in the future.

Responsibility	Director of Resources/Head of Legal and Democratic Services
Priority	High
Date	With immediate effect.
Comments	Cheshire West and Chester Council will continue to share professional advice in relation to joint projects with Cheshire East Council.

Recommendation 2

Cheshire East should consider sharing specialist advice where appropriate in the future.

Responsibility	Borough Treasurer and Head of Assets
Priority	Agreed
Date	Immediate/Ongoing
Comments	Cheshire East Council undertakes to share special advice where appropriate in relation to the management of those assets held jointly with Cheshire West under the terms of the Property Transfer Agreement dated 31 March 2009.

Recommendation 3

Cheshire West should review the approach to the sale of County Hall to identify any lessons that can be learned for future decision-making and the ongoing rationalisation of their property portfolios.

Responsibility	Director of Resources
Priority	Medium
Date	Implemented
Comments	This has happened with a number of examples in support eg shared services operations, property transfer agreements finalising asset allocations from LGR and avoiding arbitration.

Recommendation 3

Cheshire East should review the approach to the sale of County Hall to identify any lessons that can be learned for future decision-making and the ongoing rationalisation of their property portfolios.

Responsibility	Borough Treasurer and Head of Assets
Priority	Agreed
Date	April 2011
Comments	It is proposed that the Property Transfer & Balance Sheet Group ask the Assets Manager (CE) and the Head of Facilities & Assets (CW) to jointly review the approach to the sale of County Hall in order to formally identify the lessons to be learnt by both parties. The Property Transfer & Balance Sheet Group will then consider and submit the findings to both Council's Executives for approval.

Recommendation 4

Remind Cheshire West members of the requirements of the Code of Conduct in relation to disclosure of information.

Responsibility	Head of Legal and Democratic Services
Priority	Low
Date	March 2011
Comments	

Recommendation 5

Cheshire West should ensure that reports relating to key decisions provide sufficient detail and are balanced in their consideration of issues.

Responsibility	Director of Resources/Head of Facilities and Asset Management
Priority	Medium
Date	Implemented
Comments	The Council has many examples of detailed reports in support of decisions taken in the first two years. The fast moving circumstances are explained in the report and it is not envisaged that this kind of scenario is likely to reoccur. Should that happen, the appropriate level of detail will be included.

Recommendation 6

Cheshire West Council's Consultation Strategy should include proper consideration of circumstances where they will consult and involve local people in meaningful ways.

Responsibility	Head of Policy, Performance and Partnerships
Priority	Medium
Date	Implemented
Comments	The Council's consultation strategy does include these circumstances in detail. Cheshire West can demonstrate many successful examples of this.

Recommendation 6

Cheshire East Council's Consultation Strategy should include proper consideration of circumstances where they will consult and involve local people in meaningful ways.

Responsibility	Borough Treasurer and Head of Assets
Priority	Agreed
Date	April 2011
Comment	It is proposed that the issue of consultation and how best to involve local people early in the decision making process for those issues which create significant public interest should form part of the review proposed under R3 above.

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