

CHESHIRE EAST COUNCIL

Cabinet Member for Procurement, Assets and Shared Services

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| Date of Meeting: | 21 st December 2010 |
| Report of: | Assets Manager |
| Subject/Title: | Alsager School - Disposal of Land to Christ Church |
| Portfolio Holder: | Councillor Peter Mason |

1.0 Report Summary

- 1.1 The purpose of this report is to provide the Portfolio Holder with the background information to enable a reasoned decision to be made in respect of the proposed transfer of land at Alsager School to the Christ Church (the Purchaser) at nil consideration.

2.0 Recommendation

- 2.1 That approximately 35 sq/m of land at Alsager School (shown coloured green on the plan attached to the report) be disposed of to Christ Church for nil consideration.

3.0 Reasons for Recommendations

- 3.1 Alsager School (the School) is now a Foundation School. During the transfer to foundation status, two boundary discrepancies were identified in close proximity of one another. These two areas were excluded from the foundation transfer so to remain in the control of the Council to enable the discrepancies to be investigated and rectified by the Council's Property Services Department. These two areas of land have now been declared surplus to operational requirements by the Children's Services Department. This report addresses the boundary discrepancy between the School and the adjacent Christ Church.
- 3.2 A boundary discrepancy between the School and the Property was identified when the Purchasers attempted to register the church hall at Her Majesty's Land Registry (HMLR). The area subject to the discrepancy is amounts to approximately 35 sqm and is shown coloured Green on the attached plan. As can be seen on the plan, there is some confusion in respect of the OS feature lines.
- 3.3 Part of the Church Hall has been built upon land that is included in the School's HMLR title, owned by the Council.

- 3.4 The Purchasers requested that in the interest of good relations and cost saving, the Green land be transferred to them at nil consideration, this option being favoured to the alternative which is to commence a protracted and time consuming adverse possession claim with HMLR.
- 3.5 The Purchasers have enjoyed uninterrupted enjoyment of the Green land for over 50 years, making a claim for adverse possession credible and realistic.
- 3.6 Further to carrying out investigations with the Purchasers, the School and the Council's own records, the following facts have been confirmed;
- i. The Green land is within the Council's ownership. It was included on the Schools HMLR title prior to the school transferring to foundation status and has been retained in Council ownership by Children's Services to allow the transfer to the Purchasers to continue.
 - ii. The Church Hall was built on the Green land over 50 years ago.
 - iii. There has never been a boundary line or feature on the ground to delineate the Green land. No boundary line or fence has ever been altered by either the School or the Purchasers.
 - iv. The School has never considered that the Green land was or is owned by the School. It has never been used by the School and there are no implications should the title transfer.
 - v. The School Governors have confirmed that they approve the proposed transfer of the Green land to the Purchasers at nil consideration.
 - vi. The Purchasers have confirmed that they will pay the Council's fees in dealing with the transaction.
 - vii. Further to the transfer to Foundation status, the Green land is now landlocked preventing maintenance without agreement from the School.
 - viii. It is considered that the Purchasers would succeed in an adverse possession claim of the Green land due to the fact that they have enjoyed uninterrupted enjoyment of it for over 50 years. In this event, the Council would lose all rights to, and control over the land.
 - ix. If the Council gives consent to the proposed transfer, the Council will be able to impose covenants by agreement to retain rights to safeguard their long term interests in the land against further or alternative development.
- 3.7 The proposed transfer of the Green land from the Council to the Purchasers is considered the most appropriate course of action and allows the Council to retain rights over the land, which would otherwise be lost if the transfer were denied and the Purchasers pursued and succeeded with an adverse possession claim.

4 Wards Affected

- 4.1 Alsager

5.0 Local Ward Members

- 5.1 Councillor Shirley Jones
Councillor Rod Fletcher
Councillor Derek Hough

6.0 Policy Implications including - Climate change, Health.

- 6.1 None.

7.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)

- 7.1 None.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Council may dispose of an interest in land on such terms as it considers fit but subject to it obtaining the best consideration. In the circumstances of this case it would seem likely that an application for adverse possession either because the Council did not object to the application or that the claimant could show that he was in adverse possession of land adjacent to his own under the mistaken but reasonable belief that he was the owner of it. In requiring the Church to pursue this remedy the Council will be incurring costs on land which is likely to have nil value. In considering what represents best consideration, S123 is likely to be satisfied in obtaining the restrictions on the land as set out above.

9.0 Risk Management

- 9.1 Future risk against future development could be safeguarded by allowing the transfer and including covenants

The background papers relating to this report can be inspected by contacting the report writer:

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