

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting:	14 February 2011
Report of:	Borough Treasurer & Head of Assets & Interim Borough Solicitor
Subject/Title:	Shared Property Assets
Portfolio Holder:	Peter Mason

1.0 Report Summary

- 1.1 Following local government re-organisation and the creation of the two new unitary Cheshire Authorities the former County Council's assets and liabilities as at 31st March 2009 needed to be allocated between the two new councils on a fair, equitable and transparent basis.
- 1.2 Guidelines issued by the Department for Communities and Local Government (DCLG) set a target date for a local agreement to be achieved by 31st December 2008.
- 1.3 In the event that agreement was not possible the provisions of the Local Government (Structural changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 provided for amongst other things a formal arbitration procedure to determine the liability for and ownership of assets.
- 1.4 Negotiations and discussions have been ongoing between the two authorities for some time in an attempt to reach agreement regarding a number of disputed assets. This report sets out the provisional agreement which has been reached at an officer level and seeks formal member approval to that agreement.
- 1.5 The proposed settlement will be considered by Cheshire West and Chester (CWAC) Executive on 9th February 2011, with a recommendation to Council on 24th February 2011. Cheshire East (CE) Cabinet are asked to approve acceptance of the proposed settlement in advance of, and therefore subject to, approval by CWAC, on that date.

2.0 Decision Requested

That Cabinet Agree

- 2.1 That the Borough Treasurer and Head of Assets may enter into an agreement with CWAC that the following properties shall vest in CE, with CE assuming full responsibility for their future management and associated costs, including any future liability accruing in respect of dilapidations at the end of any lease term, as from 1 January 2011.

2.1.1 Corporate Administrative Buildings

Chapel Lane, Wilmslow
Delamere House, Crewe
Riverside Mill, Congleton
Dalton House, Middlewich

2.1.2 Tatton Park, Knutsford

2.1.3 Surplus Properties

The Moss Macclesfield
Pyms Lane, Crewe
63/65 Wheelock Street, Crewe
Depot Site Newhall Avenue Sandbach
Trinity Court Risely Street Macclesfield
Land at Lyon Street Crewe

- 2.2 That the Borough Treasurer and Head of Assets may enter into an agreement with CWAC that the following properties shall vest in CWAC with CWAC assuming full responsibility for their future management and associated costs, including any future liability accruing in respect of dilapidations at the end of any lease term, as from 1st January 2011.

2.2.1 Corporate Administrative Buildings

Richard House, Chester
Watling Street, Northwich
Backford Hall, Chester
Goldsmith House, Chester
Nexus House, Chester
Phoenix House, Winsford
Merchant House, Chester
Nicholas House, Chester
Castle Square Car Park, Chester – Remnant of Title following earlier completed transfer of County Hall, Chester.

2.2.2 Surplus Properties

The Beacons, Frodsham Hill
Sherwood Court Helsby
Winsford Highways Depot, Winsford
New Bridge Road Ellesmere Port

2.2.3 Outdoor Education Centres

Burwardsley Outdoor Education Centre (OEC)
Beeston OEC
Tattenhall OEC
Delamere OEC
Conway Centre Anglesey

- 2.3 That the Borough Treasurer and Head of Assets may enter into an agreement with CWAC that those farms declared surplus to requirements by the former Cheshire County Council and located in the geographical area of CE shall vest solely in CE.
- 2.4 That the Borough Treasurer and Head of Assets may enter into an agreement with CWAC that those farms declared surplus to requirements by the former Cheshire County Council and located in the geographical area of CWAC shall vest solely in CWAC.
- 2.5 That in consideration of the agreements reached in paragraphs 2.1 to 2.4, the Borough Treasurer and Head of Assets be authorised to accept a payment of £2.34million from CWAC to CE.

3.0 Reasons for Recommendations

- 3.1 To allow Members to make a final decision about the proposed settlement.

4.0 Wards Affected

- 4.1 All.

5.0 Local Ward Members

- 5.1 All.

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 None.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 As at the agreed date, Cheshire East Council (CE) will assume full ownership and ongoing responsibility for the future management and associated costs, including any future liability accruing in respect of dilapidations at the end of any lease term, for those 'Corporate Administrative Buildings' identified in paragraph 2.1.1 of this report.
- 7.2 As at the agreed date, CE will assume full ownership and ongoing responsibility for the future management and associated costs, including any future liability accruing in respect of dilapidations at the end of the lease term, for Tatton Park, Knutsford.
- 7.3 CE will be entitled to receive the entire proceeds of sale resulting from the future onward disposal of those 'Surplus Properties' identified in paragraph 2.1.3 of this report.
- 7.4 As at the agreed date, CE will no longer have any ownership or ongoing financial responsibility for those Corporate Administrative Buildings identified in paragraph 2.2.1 of this report.

- 7.5 CE will no longer be entitled to a share of any proceeds of sale resulting from the future onward disposal of those 'Surplus Properties' identified in paragraph 2.2.2 of this report.
- 7.6 As at the agreed date, CE will no longer have any ownership or ongoing financial responsibility for the Outdoor Education Centres (including the Conway Centre, Anglesey) identified in paragraph 2.2.3 of this report.
- 7.7 CE will be entitled to receive the entire proceeds of sale resulting from the future onward disposal of those farms declared surplus to requirements by the former Cheshire County Council and located in the geographical area of CE (paragraph 2.3).
- 7.8 CE will no longer be entitled to a share of any proceeds of sale resulting from the future onward disposal of those farms declared surplus to requirements by the former Cheshire County Council and located in the geographical area of CWAC (paragraph 2.4).
- 7.9 In consideration of the changes in terms of ownership, responsibility and the ongoing financial liabilities of both CE and CWAC, as described in paragraphs 7.1 – 7.8, CE will receive a one off payment from CWAC of £2.34million.
- 7.10 As referred to under paragraph 10.2, the settlement figure of £2.34million includes a net payment by CWAC to CE based on a 50% share of the capital value of the Corporate Administrative Buildings less the ongoing liability for their future running costs, as provided for Schedule 1 of the Property Transfer Agreement. If agreed, the annual saving in future contributions to the ongoing running costs accruing to CE will be in the order of £400,000 per annum over the life of the Agreement. These savings will contribute to the achievement of savings targets already agreed by CE.
- 7.11 The net payment from CWAC of £2.34million will constitute a capital receipt to CE, and will therefore be available to fund future capital investment. Accordingly, It has been/will be included in future receipts forecasts for planning purposes.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 This paper seeks the formal approval of Cabinet to a provisional agreement regarding a number of assets as set out in paragraph 10 below over which agreement could not be reached following local government reorganisation.
- 8.2 Section 16 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) provided that the property rights and liabilities of former County Councils that are abolished were to be transferred in accordance with agreements between the councils concerned. It was expected that most of the property rights and liabilities of abolished County Councils would be transferred in this way by the reorganisation date 31st March 2009.

- 8.3 The majority of all property rights and liabilities were transferred by agreement between CE and CWAC. However no agreement could be reached with regard to a small number of assets as at 31st March 2009.
- 8.4 These assets were then held as provided for under the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (the 2008 Regs). The 2008 Regs set out the arrangements as to how the disputed property was to be held and amongst other things provided a procedure for arbitration. This was documented in the Property Transfer Agreement dated 31st March 2009 between CE and CWAC.
- 8.5 Since the 31st March 2009 negotiations have taken place between both parties in an attempt to reach an agreement, and to avoid the need for arbitration.
- 8.6 Section 16 (2) of the 2007 Act provides for such agreements as between successor authorities to be made and in particular any agreement reached may provide for the transfer or retention of any property, rights and liabilities with or without conditions, and for the joint use of any property . It also provides for the making of payments by any party to the agreement in respect of property rights and liabilities transferred or retained, including payments for joint use.

9.0 Risk Management

- 9.1 Since the 31st March 2009 negotiations have taken place between both parties in an attempt to reach an agreement in respect of the various issues contained in the Property Transfer Agreement. Failure to reach agreement in relation to the decisions requested in Section 2 of this report will result in a referral to arbitration in accordance with the provisions of Clause 11 of the Property Transfer Agreement.

10.0 Background and Options

- 10.1 Members have considered a number of reports previously in relation to the disaggregation of Cheshire County Council's balance sheet, assets and liabilities (Report to Cabinet dated 17th December 2008 and 6th January 2009). Following detailed discussions and negotiations between the parties, it has been agreed that Cheshire West and Chester Council (CWAC) will pay to Cheshire East Council (CE) the sum of £2.34 million in full and final settlement of the outstanding issues identified in, or related to, the Property Transfer Agreement (the 'Agreement) made between the parties and dated 31st March 2009, with the exception of the particular issues identified in this report which both parties have agreed will be the subject of separate negotiations in the future. It is further proposed that the settlement will bring to an end the respective ongoing arrangements between the parties on 31st December 2010.

- 10.2 Properties Vesting by Agreement – Corporate Administrative Buildings (Freehold) – Ownership of all properties to fall geographically with the relevant authority assuming full responsibility for their future management and the associated costs. The settlement figure of £2.34million includes a net payment by CWAC to CE based on a 50% share of the capital value of the properties less the ongoing liability for future running costs, as stipulated in Schedule 1 of the Agreement.
- 10.3 Properties Vesting by Agreement – Corporate Administrative Buildings (Leasehold) –. The ownership of all properties to fall geographically with the relevant Council assuming full responsibility for their future management and associated costs, including any future liability accruing in respect of dilapidations at the end of the respective lease terms
- 10.4 Properties Vesting by Agreement – Other Shared Land and Buildings – For the purposes of the proposed settlement, all the properties included under this heading in the Agreement are excluded and will form part of future discussions between the two parties. All of the properties provide accommodation for the relevant Shared Service and, consequently, decisions about their future are inextricably linked to the future of that Shared Service.
- 10.5 Surplus Properties - The settlement figure of £2.34million includes a net payment by CE to CWAC on the basis of the agreed tax base split (CE 54.27%, CWAC 45.73%). Therefore, the surplus properties will fall geographically with the relevant authority compensating the other based on the appropriate percentage of the capital value of each individual property. For reasons of consistency of approach, the proposed settlement figure includes, in addition to those properties identified in the Agreement, the now surplus former Waste PFI site in New Bridge Road, Ellesmere Port. The former Waste PFI site in Pyms Lane, Crewe was declared surplus prior to LGR and is included in the Agreement.
- 10.6 Surplus Farms – The ownership, together with the allocation of any proceeds of sale, of those farm properties declared surplus by Cheshire County Council prior to vesting day to fall geographically.
- 10.7 The following properties are included as Residual Matters in the Property Transfer Agreement on the basis that the two parties were unable to agree the vesting or maintenance liabilities in respect of each property:

Burwardsley Outdoor Education Centre	F/H	CWAC
Beeston Outdoor Education Centre	F/H	CWAC
Tattenhall Outdoor Centre	F/H	CWAC
Delamere Outdoor Centre	F/H	CWAC
Conway Centre, Anglesey	L/H	CWAC
Tatton Park, Knutsford	L/H	CEBC

The Conway Centre sits outside the geographical boundaries of both authorities but was allocated to CWAC. Tatton Park in Knutsford is the only asset which sits with CE. The proposed settlement figure of £2.34million is made on the basis that the individual properties fall geographically. For complete clarity, the Conway Centre will fall to CWAC.

11.0 Access to Information

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

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