

# CHESHIRE EAST COUNCIL

## CABINET

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<b>Date of Meeting:</b>	7 May 2013
<b>Report of:</b>	Director of Economic Growth and Prosperity
<b>Subject/Title:</b>	Property Asset Transfer:- Transfer of the Former Water Street School, Bollington
<b>Portfolio Holder:</b>	Cllr Jamie Macrae Portfolio Holder for Prosperity and Economic Regeneration

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### 1.0 Report Summary

This report is intended to seek approval to the property asset transfer of the land and buildings known as the Former Water Street School, Bollington shown edged in red on the attached plan to local charity (number 1110683) Bollington Initiative Trust (BIT), upon the terms outlined in this report.

### 2.0 Decision Requested

2.1 It is recommended to Cabinet:

- That both the Council's freehold and leasehold interests in the site shown edged in red on the attached plan be transferred to Bollington Initiative Trust upon the terms outlined in Section 10 of this report.
- That delegated authority be given to the Director of Economic Growth and Prosperity and the Interim Monitoring Officer and Head of Legal Services to finalise the details of the proposed freehold transfer and long lease assignment of the property and any statutory declarations/statements of truth as may be required to regularise title and transfer the whole site to Bollington Initiative Trust.

### 3.0 Reasons for Recommendations

- 3.1 The proposed asset transfer is in line with the localism act and will enable the local community to have a direct say on how the asset is managed.
- 3.2 The proposed sale will generate a significant revenue saving and relieve the Council of ongoing maintenance and management liability.
- 3.3 This will in turn help to safeguard the ongoing pre school use on the ground floor of the building and give comfort and longevity to the other community groups and users such as local fun days, youth clubs and cadets which have all used the building and site for local community activities.

- 3.4 BIT's intention is to create a versatile local business centre and community building with a variety of potential uses and users relating to community cohesion and business and community group incubation. The rooms on the first floor of the property will be leased out at commercial rents to tenants and the ground floor will be used for community use. The land shown coloured yellow on the attached plan may be developed for housing.

#### **4.0 Wards Affected**

- 4.1 Bollington

#### **5.0 Local Ward Members**

- 5.1 Cllr B Livesley  
Cllr P Hayes

#### **6.0 Policy Implications including - Carbon reduction - Health**

- 6.1 Disposal of buildings will reduce the Council's carbon footprint and liability for carbon tax.
- 6.2 National Policy is designed to decentralise government and give communities power to make a difference in their area. This initiative clearly aligns with this national drive.

#### **7.0 Financial Implications**

- 7.1 The transfer of the site for £1.00 represents a potential undervalue of up to £435,000. This is the market value based on residential redevelopment/conversion of the site which was in a report completed by the District Valuer Services dated 9<sup>th</sup> August 2012- however this does not take into the account the restrictions around access or the amount of work that will be required to enable any redevelopment of the site which are considered to be substantial and are expanded on further within section 9 of this report . The Council is able to dispose of land and buildings at less than best consideration under the General Disposal Consent referred to in Legal Implications where the 'undervalue' is less than £2million and the other conditions of the Consent are satisfied
- 7.2 The Council proposes to forego the capital receipt in this instance to support the promotion of well being as outlined herein and to create savings.
- 7.3 An overage agreement will obligate BIT to pay a proportion of any increase in value from £1.00 upon a resale or lease of the site or part of it and/ or any increase in value resulting from implementation of planning consent in respect of the brown and/or yellow land shown on the attached plan. Such obligation to run for 15 years on the basis of:
- year 1 – 100%

- year 2 – 90%
  - year 3 – 80%
  - year 4 - 60%
  - year 5 – 40%
  - year 6 – 30%
  - years 7 to15 – 25%
- 7.4 The overage agreement will in all material respects bar one replicate the overage deeds which the town and parish councils have entered into in respect of properties transferred to them under the transfer policy. The exception is that the Council accepts that if the whole or part of the site coloured brown on the attached plan and/or the whole or part of the site shown yellow on such plan are sold or leased in respect of the whole or part and the proceeds of sale received by BIT are then applied towards improvements to site only and the proceeds of sale are so applied within a timescale to be agreed no overage shall be payable to the Council in consequence of the relevant sale or letting.
- 7.5 The Council currently pays £16,000 per annum to BIT under the terms of a management agreement including all non structural repairs and maintenance and day to day tenant management issues and obligations and any necessary security and key holding arrangements.
- 7.6 Under the proposed transfer BIT would become accountable for the whole site including all major structural repairs
- 7.7 The Council will also forego the current rental income for the site which is £6,000 pa exclusive from the pre school tenant on the ground floor. This will assist BIT with the running costs for the building, making the proposal more viable going forward.
- 7.8 The building is in poor condition and will require substantial refurbishment to bring back into operational use or tenantable use on the first floor. The Council will be liable for substantial internal and external repairs and maintenance going forward if the site is not sold or transferred. The detached land coloured yellow has a circa 30 ft high retaining wall running the length of the rear boundary which will also need attending to in the near future. The retaining wall is a barrier to obtaining vehicular access to the detached land coloured yellow. The District Valuer's valuation report states that it would be costly to acquire rights to access the yellow land. The 'hope value' of £75,000 applied to this land would be subject to deductions for acquiring and creating the access in order to facilitate residential redevelopment on the land which could leave the land with a negative value once the ability to develop it has been taken into account. The site with unhindered access would be worth in the region of £75,000. The total value of the whole site (Land and Buildings is £435,000).

## **8.0 Legal Implications**

- 8.1 Local authorities are able to dispose of land and buildings at less than the best consideration reasonably obtainable under the General Disposal Consent (England) 2003, where the 'undervalue' is less than £2million. A lease for a

term of more than 7 years is a disposal. The Consent requires the local authority to be of the view that the disposal is likely to help to secure the promotion or improvement of the economic, social or environmental well-being of its area or residents resident in its area.

- 8.2 There is also a requirement for a local authority to satisfy itself that it will not give unlawful State Aid as by accepting an `undervalue` the Local Authority is providing a subsidy. The Council has obtained advice on State aid from lawyers specialised in this area. For a variety of reasons including (a) because the real benefit in this case will flow through to end users who are largely not commercial businesses carrying out an economic activity; (b) because the only arguable beneficiary here – BIT – is engaged fundamentally in community activities meaning there will be little or no distortion of competition arising as a result of the deal and/or no possible effect on trade between Member States; (c) because the amounts concerned are comparatively small; (d) the amount of State resources arguably attributable to commercial activity may be de minimis (i.e. below EUR 200k per undertaking); and (e) because there is no apparent complainant nor particular audit chain that would be likely to scrutinise the matter further the external lawyers do not consider there should be any real concern over State aid for this project. However, only European Commission approval would give absolute legal certainty but any such notification would seem thoroughly disproportionate (in the lawyers` experience) to the facts at issue, for the reasons explained above. Ultimately, the final risk, should the project ever be challenged for State aid, would lie with BIT, who, in theory, could be required by law to refund the State aid together with interest.
- 8.3 However it should be noted that the yellow land can only be accessed on foot by means of a footbridge from the part of the site coloured blue on the attached plan and the Council cannot prove an entitlement to use that footbridge. The site has the potential for reuse for a number of purposes but is considered most suitable for redevelopment for housing. The Council does not own the land approaching the bridge, the land shown coloured pink on the plan which is owned by L and S Barber Builders Limited Company number 1333085. The Council does not own the bridge. There is a high retaining wall on the North and North East boundaries of the land shown coloured yellow on the plan so that the only access to and egress from the yellow land is over the footbridge. The [main] site has the potential for reuse for a number of purposes but is considered most suitable for redevelopment for housing. BIT may either develop the land shown coloured yellow on the plan for housing or sell the land coloured yellow on the plan to a developer for housing development.
- 8.4 There is no requirement that local authorities undertake a tendering process within the General Disposal Consent. However, there is the general requirement for authorities to follow "normal and prudent commercial practices". Where a local authority has undertaken a valuation of the asset to understand the level of the `undervalue` and has established a robust business case for transfer, there would be no further requirement to 'market test' a transfer proposal to meet the General Consent criteria

- 8.5 In transferring assets the Council must behave prudently to fulfil its fiduciary duty.
- 8.6 If the Council is minded to deal only with BIT it needs to have rationalised why the disposal brings benefits that outweigh undertaking a market process.

## **9.0 Risk Management**

- 9.1 The site has not been offered for sale or transfer on the open market. and thus the Council cannot evidence whether there is demand from other parties whether those parties be charitable, community organisations, social enterprises or private individuals. Consequently the Council may be at risk of legal challenge from aggrieved parties in the event of it seeking to progress an off market transaction with one particular local community group as opposed to marketing the opportunity to the wider community. In this regard it should be noted that Bollington Town Council has confirmed that it is not interested in taking ownership of the property and is promoting its transfer to BIT.

Local residents have been interested in taking bits and pieces of the site in the past for nominal sums to prevent anti social behaviour in the grounds or to extend their gardens. It has not been considered prudent to date to recommend breaking up the site given the different types of ownership and ongoing community uses dependant on the external areas to support their use of the building, it has been brought to our attention that a local shop/warehouse abutting the rear of the detached playground coloured yellow has just been placed on the market referring to a development opportunity incorporating adjacent disused land owned by the Council. The warehouse is for sale for £230,000 and could provide an access to redevelop the land locked land coloured yellow on the attached plan. The District Valuer valued the yellow land owned by the Council at £75,000 in the 'hope' that access could be achieved to redevelop for residential purposes but highlighted that achieving access would be very costly given the land levels (difference of circa 30 ft in a very tight/constrained area) of the land between street level and the base of the retaining wall. The surrounding/remaining land/retaining wall also needing to be attended to in order to create the necessary access. The cost could erode that value. The overall valuation of the whole site included this element of value in its total. No discussions or confirmation has been given to the Agent marketing this warehouse or to the owner. The Council has just made a note of the local interest in the site and is confirming that interest herein.

- 9.2 That the proposal is not viable and sustainable in the long term, however it is felt that it creates social and environmental value and benefits which support the corporate aims and priorities of the Council as set out in adopted policy.
- 9.3 The capacity of BIT to conserve and manage the asset [or other public buildings and open spaces for continued public use and access .and to meet capital and ongoing revenue costs in order to demonstrate the ongoing sustainability of the social and environmental value and benefits.

- 9.4 That the proposed transfer is carried out in a transparent manner with clear processes for assessing the benefits of the transfer (linked to corporate priorities) which allows a comparison with market value.

## **10.0 Background and Options**

- 10.1 The former school building is a two storey stone construction situated in a conservation area and is locally listed. It is approx 600 square meters in internal area laid out over 2 floors, ground floor consists of 2 main children's play rooms, small office, toilets and small kitchen area, 1<sup>st</sup> floor consists of 5 meeting rooms/offices, Kitchen/diner area and toilets. The land and building coloured blue and brown on the attached plan is approx 0.28 acres in area, the additional land coloured yellow is approx 0.17 acres in area. The building is not nationally listed. Local residents have been permitted to park cars free of charge on the land shown coloured brown on the plan.
- 10.2 Water Street School, Bollington has not been used as a school for approx. forty years. There is a children's pre school tenant on the ground floor of the building - Bollington Pre School. A nursery/pre school provision has been in operation from this building for approx 30 years or more and is contributing to the Council's necessary provision of pre school childcare for the locality. The remainder of the building has been used by community groups in the past, most notably as a youth club and base for the Sea Cadets. Due to the current condition and uncertainty of the future use of the building both the youth club and the cadets no longer operate from the building. There is an external playground and car park which supports the use of the building by the pre school tenant and parents and a vacant piece of land on the opposite side of the brook coloured yellow on the attached plan. This additional piece of land was a former hard play area and most notably has a retaining wall to the rear which will need significant maintenance in the future to support any long term re use of this piece of land. There is also an issue with the ownership of the land leading to the footbridge (such land shown coloured pink on the attached plan) and the footbridge access to the additional land over the River Dean. The bridge separates the land from the main site and the yellow land has only this pedestrian access currently.

The site is owned by the Council - freehold the blue and yellow areas of land which includes the building. The brown area is long leasehold (999 years). The footbridge and the land leading to the footbridge were never formally transferred to the Council and therefore are not in the Council's ownership. Further legal searches and potentially a statutory declaration or statement of truth may be required to obtain a legal right of access to this piece of land to BIT.

- 10.3 The proposal to transfer this site to BIT was brought forward from the former Cheshire County Council list of ongoing projects and recommendations and was listed as a Quirk Path Finder Project prior to LGR.

- 10.4 Bollington Initiative Trust is a Macclesfield based charity (charity number 1110683) and operates in the acquisition and conservation of public buildings and open spaces for continued public use and access.
- 10.5 BIT has been managing the site since before LGR and under the terms of a management agreement obligating them to pay all the utilities and undertake all internal and external repairs and maintenance (except major structural) and manage the building both tenanted and untenanted day to day and to ensure that the site is secure.
- 10.6 BIT intends to renovate the school building and the playground and use them for community groups to meet and carry out their activities. The first floor of the school building will be as units to be let out at commercial rents. The ground floor is intended to be used by community groups. BIT will receive the rental income from the tenants on the site to offset running costs.  
It is possible that BIT will dispose of or develop itself the land coloured yellow and/or the land coloured brown on the attached plan and apply any proceeds of sale/letting of the yellow/ brown land for the furtherance of its charitable purposes at Water Street School.
- 10.7 BIT have put forward a detailed business case to support their request for the transfer of the asset to them.
- 10.8 In general terms, when assessing the merits of a community asset transfer, the decision is essentially a choice between achieving a capital receipt from the sale of the asset and using that receipt to support the councils spending needs and the benefits generated to the community and/or the council by the transfer of the asset to BIT
- 10.9 The ownership and the management of assets by community organisations is being supported by Government. It is seen as a means to achieve a range of key objectives, from promoting civil renewal, active citizenship and improving local public services to tackling poverty and prompting economic regeneration - through developing social enterprise and supporting the growth of community anchor organisations
- 10.10 Therefore, in making this asset transfer decision, local authorities should:
  - 10.10.1 Have regard to their community strategy.
  - 10.10.2 Assess the likely amount of the undervalue
  - 10.10.3 Understand what community benefits will be realised by transfer and how the interests of local people will be better served.
  - 10.10.4 Have regard to business plan and financial viability of the community based organisation's plans.
  - 10.10.5 Understand the State Aid implications.
  - 10.10.6 Assess market interest.

## **11.0 Access to Information**

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

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