

# CHESHIRE EAST COUNCIL

## Cabinet Member for Assets & Shared Services

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<b>Date of Meeting:</b>	22 <sup>nd</sup> December 2009
<b>Report of:</b>	Assets Manager
<b>Subject/Title:</b>	Crewe Business Park – Plot 4b: Consent to Assign and Vary Agreement for Lease
<b>Portfolio Holder:</b>	Councillor Peter Mason

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### 1.0 Report Summary

- 1.1 The purpose of this report is to inform the Portfolio Holder of a request by OCC Estates Limited to take an assignment of the existing Agreement for Lease dated 19 May 2006 between Crewe & Nantwich Borough Council and Provincial Land Limited (“Agreement for Lease”), and agree to a variation to the Agreement to deal with changes in relation to phasing and the timing of completion of development phases.

### 2.0 Recommendations

That

- (1) approval be given to the proposed assignment of the Agreement for Lease to OCC Estates Limited, on terms and conditions to be determined by the Borough Solicitor, Borough Treasurer and Head of Assets; and
- (2) approval be given to a variation of the Agreement for Lease to deal with changes in relation to phasing and the timing of completion of development phases, on terms and conditions to be determined by the Borough Solicitor, Borough Treasurer and Head of Assets.

### 3.0 Reasons for Recommendations

- 3.1 A request has been made by OCC Estates Limited for the authority to consent to assignment of the Agreement for Lease.
- 3.2 The agent acting for Provincial Land Limited (current holders of the Agreement) has indicated that his client is not in a position to perform its obligations under the terms of the Agreement for Lease.
- 3.3 OCC Estates Limited has a funding package in place to facilitate the proposed development. OCC has also undertaken similar developments in the local area (Alveston Business Park, Nantwich).

3.4 The authority would enjoy the financial and economic benefits of the site being built out within a defined timescale.

3.5 The recommendations are supported by the Regeneration Manager.

#### **4.0 Wards Affected**

4.1 Crewe East Ward

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

5.1 Councillors Steve Conquest, Margaret Martin and Chris Thorley.

#### **6.0 Policy Implications including - Climate change, Health.**

None.

#### **7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

None. Service charge payments are made by all occupying tenants so the impact of Provincial Land occupying the plot would only be to reduce the other lessees payments and not the overall total payable.

#### **8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

None. The capital receipt of £550,000 was received two years ago. All ground leases are subject to an upfront premium being paid.

#### **9.0 Legal Implications (Authorised by the Borough Solicitor)**

9.1 The assignment will be in accordance with the existing agreement for Sale and Development dated 19 May 2006 and made between Crewe and Nantwich Borough Council and Provincial Land Limited (Development Agreement) other than to allow a variation to deal with changes in relation to phasing and the timing of completion of development phases.

#### **10.0 Risk Management**

10.1 If the authority does not give consent to assign, the current lessee will not perform in accordance with the Development Agreement and the remainder of plot 4b will not be built out by the stipulated date (i.e. 30 June 2011) with no certainty of when the development might complete. The authority could enforce forfeiture and take possession of the land. The authority will then be liable for costs associated with security, marketing and negotiating a new sale and development agreement.

- 10.2 If the Authority gives its consent to assign, the remainder of the plot 4b may not be built out by the stipulated date of 30 June 2011, but will be built out by Dec 2014 (assuming legal completion of the assignment prior to the end of December 2009).

## **11.0 Background and Options**

- 11.1 Crewe Business Park was developed as a joint venture between Cheshire County Council and Crewe and Nantwich Borough Council in 1986. The two authorities pooled together land (playing fields and farm land) and capital, invested in infrastructure for the site and agreed a 50/50 ownership arrangement.
- 11.2 The 67 acre site carries B1 office only planning allocation with a stringent design brief concerning density and landscaping.
- 11.3 The majority of the development land has been sold on 125 year leases with premiums paid up front, the receipts then split 50/50 between the two authorities.
- 11.4 All developable land on the business park has been sold and built out, other than two plots (plot 1 & plot 4b) with development phases awaiting commencement.
- 11.5 Failure to perform in accordance with the Development Agreement allows the landlord to exercise forfeiture and re-enter upon the land.
- 11.6 In May 2006 plot 4b was sold to Provincial land. It was agreed that the 0.49 acre site would be developed in 3 phases, with 3 separate leases granted on practical completion of each phase. Phase one has already been developed and was completed in accordance with the development agreement (i.e. prior to 30 June 2007). The Development Agreement stipulates that the remaining phases both be completed prior to 30 June 2011.
- 11.7 Current difficulties in the property and financial sectors have brought a slow down to development and letting of office developments, however, the authority would still like to see completion of Crewe Business Park development.
- 11.8 Provincial Land's agent has informed the authority that Provincial Land is not in a position to perform in accordance with the agreement to lease. Therefore the remaining 2 phases will not be developed by 30 June 2011.
- 11.9 Should Provincial Land fail to perform, the agreement to lease allows the landlord to exercise forfeiture. If forfeiture were exercised, the completion of the remaining phases would be pushed back indefinitely, and the authority would be subject to further costs; marketing, surveyor, legal etc.

11.10 OCC Estates Ltd has proposed to build out the remaining plot 4b land as follows; -

In 3 phases instead of two, phase 1 should be developed within 2 years of the completion of the deed of variation, Phase 2 should be developed within a further 18 months, and Phase 3 should be developed within a further 18 months. Therefore, long stop build out by December 2014 (assuming legal completion by the end of December 2009). Leases will be granted on a phase by phase basis upon practical completion.

11.11 The authority has already agreed to relax the build out dates applicable to the agreement to lease in respect of plot 1 Crewe Business Park by approx 24 months. Therefore a precedent has been set.

11.12 With the above information in mind, the proposal by OCC Estates Ltd is acceptable to the Assets Manager.

## **12.0 Access to Information**

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

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