

Cheshire East Council

Cabinet Member for Regeneration

Date of Meeting:	14 August 2017
Report of:	Executive Director for Place
Subject/Title:	Freehold Transfer of Allotment Sites in Crewe to Crewe Town Council and Grant of Easements.
Portfolio Holder:	Councillor Don Stockton

1. Report Summary

- 1.1. The background to this matter is contained in the previous report dated 13th March 2017 (a copy of which is attached).
- 1.2. Two of the allotment sites detailed in the above mentioned report have been nominated and accepted as Assets of Community Value (pursuant to the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012) and in order to protect the status of those sites restrictions have been lodged at the Land Registry to prevent a disposal of the sites other than in accordance with the statutory provisions. The applications for registration of those restrictions was made after Cheshire East Council's ("CEC") application to the Land Registry to rectify the freehold ownership of its land, which included all of the allotment sites and the two Asset of Community Value sites.
- 1.3. CEC and Crewe Town Council ("CTC") had previously drafted and agreed a Consent Order to dispose of the proceedings at The Property Chamber, Land Registration, First-tier Tribunal ("the Tribunal") and a Settlement Agreement to transfer the freehold of the allotment sites only to CTC immediately after the Land Registry rectification (returning the freehold of the land effected to CEC) had taken place. The pending restrictions for the two Assets of Community Value sites will prevent the immediate transfer back to CTC of those two sites, which was agreed as part of the Settlement Agreement.
- 1.4. The parties have agreed that the freehold ownership of the two allotment sites registered as Assets of Community Value shall upon conclusion of the proceedings with the Tribunal remain with CTC, with the remaining land within those title numbers and the title numbers not including the Assets of Community Value sites to be rectified by the Tribunal, with the result of returning the land to the freehold ownership of CEC.

2. Decision requested

It is recommended that the Portfolio Holder:

- 2.1 agrees to the rectification of all of the title numbers CH562085, CH498284, CH562197, CH562605, CH563125, CH563728 and CH564009 excluding the two allotment sites (shown on the attached plans C and G) from Crewe Town Council to Cheshire East Council. This will be formalised by way of a Consent Order made between Cheshire East Council and Crewe Town Council, which shall be submitted to the Tribunal and will (once accepted) conclude the current proceedings;
- 2.2 provides authority to enter into a Settlement Agreement and following the above rectification, to formally transfer the freehold titles to the remaining 7 allotments sites (listed in paragraph 2 of Appendix 1 to this report) to Crewe Town Council and to grant and reserve rights as part of those transfers and to enter into easements (in respect of the allotment sites where the freehold ownership will not be rectified by the Tribunal) for the benefit of Cheshire East Council's retained land and to grant rights for the benefit of those allotment sites (shown on Plans C and G attached); and
- 2.3 provides authority to deal with any other legal documentation required to formalise the agreement reached between the parties for the purpose of registering Cheshire East Council's and Crewe Town Council's land ownership, rights granted and for concluding the current proceedings with the Tribunal.

3. Other Options Considered

- 3.1. Not to transfer the freehold of the allotment sites, however, the matter has been subject to legal proceedings which the parties propose to settle in the manner set out in this report.

4. Reasons for Recommendation

- 4.1 CEC and CTC have worked together in order to arrive at a Settlement Agreement which meets the requirements of both parties in order to agree the terms of the transfers relating to allotment land site boundaries, rights of access and other rights and reservations necessary in respect of the 7 allotment sites detailed in Appendix 1, and for both parties to grant rights in respect of the 2 sites which are Assets of Community Value and shall remain in the freehold ownership of CTC. Both parties have agreed to bear their own costs in respect of this matter.

- 4.2 The alternative option to resolution by agreement is statutory arbitration pursuant to the Regulations or referral by the Land Registry of this matter to the Property Chamber of the First-tier Tribunal and the resultant formal legal proceedings, which have already been commenced. This would be more expensive and time consuming than resolving the matter by way of agreement and brings with it a degree of uncertainty in so far as how the Tribunal would seek to resolve the transfer of the allotment land (given the complexities of that land forming part only of the registered titles effected and CEC retaining ownership of land within those effected title numbers). Resolution of the current proceedings by agreement is the most expeditious and cost effective option for the Council and the residents of Cheshire East.

5. Background/Chronology

- 5.1. Please refer to the report summary set out at section 1 of this report.

6. Wards Affected and Local Ward Members

Wards Affected:-

Crewe Central
Crewe West
Crewe East
Crewe North
Crewe South
Crewe St Barnabas

Local Ward Members:-

Cllr Irene Faseyi
Cllr Steve Hogben
Cllr Dorothy Flude
Cllr Jill Rhodes
Cllr Brian Roberts
Cllr Suzanne Brookfield
Cllr Clair Chapman
Cllr David Newton
Cllr Damian Bailey
Cllr Mo Grant

7. Implications of Recommendation

7.1. Policy Implications

- 7.2. None. This is in line with Council policies and decisions.

Legal Implications

- 8.1 The reorganisation order which created CTC (“the Order”) came into effect on 1st April 2013, the Order was made by virtue of several provisions of the Local

Government and Public Involvement in Health Act 2007 and regulations were made pursuant to the provisions of that Act.

- 8.2 The Order creating the CTC made provision for other matters including transfer of property rights. Included in the Order was a requirement for all of the allotment land to be transferred to CTC by way of 150 year leases. CTC subsequently objected to the allotment land being leased to them and their position was and remains that the freehold to the allotment land vested in CTC on the date that it was created (1st April 2013).
- 8.3 The Local Government (Parishes and Parish Councils) (England) Regulations 2008 (“the Regulations”) apply to the Order. By r.9 of the 2008 Regulations it is provided that where immediately before the order date (in this case, 1st April 2013) land in an area constituted as a parish by a reorganisation order is held by a principal council for any purpose of the Allotments Acts 1908 to 1950 or is vested in a principal council and used for those purposes, it shall on the order date transfer to and vest in the parish council for that parish or, if there is no such council, the parish meeting for that parish.
- 8.4 The Regulations provide for the vesting of the freehold of the allotment land only to CTC and this is contrary to the provisions made for the allotment sites in the Order creating CTC.
- 8.5 The Regulations do not make provisions where there is to be a transfer of part of property to effect the freehold transfer (as is the case here for 9 of the allotment sites) and as such these provisions will either need to be agreed between the parties or if not agreed the freehold of the allotment land could vest in CTC with no formal rights and reservations being granted or reserved and no such entries being made on the affected titles at the Land Registry.
- 8.6 In addition to the Regulations section 123 of The Local Government Act 1972 authorises CEC to disposal of land subject to any disposal for 7 years or more being at the best consideration that can reasonably be obtained.
- 8.7 The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is £2million or less, if the undervalue is higher than £2 million consent to the disposal is required from the Secretary of State.
- 8.8 Notwithstanding the above powers CEC has a fiduciary duty to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 8.9 All disposals must comply with the Europeans Commission’s State Aid rules. When disposing of land at less than best consideration CEC is providing a subsidy to the occupier of the land. In such cases CEC must ensure that the nature and the amount of the subsidy complies with State Aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £175,000 (200,000 Euros) in State Aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to

distort competition). State Aid does not apply in this instance because this is a transaction between statutory bodies where there is no distortion of the market or competition.

9.0 Financial Implications

- 9.1 Rectification of the freehold ownership of part of the land by way of a Settlement Agreement, resolution of the current proceedings by way of a Consent Order between the parties and then transfer of part of 7 of the allotment sites to CTC and the grant of rights in respect of the remaining 2 sites will carry costs for both parties in terms of legal and surveyor's fees and disbursements. The proposal to seek to rectify the matter by agreement will result in lower costs to both parties than either determination by statutory arbitration or Tribunal hearing. Both parties have agreed to bear their own costs in respect of the Settlement Agreement, Consent Order, rectification of the titles, the transfers and the easements.

10 Equality Implications

- 10.1 It is not considered that the recommendations made in this report have any direct implications on equality and diversity.

11 Rural Community Implications

- 11.1 It is not considered that the recommendations made in this report have any direct implications on the Rural Community.

12 Human Resources Implications

- 12.1 It is not considered that the recommendations made in this report have any direct implications on human resources.

13 Public Health Implications

- 13.1 It is not considered that the recommendations made in this report have any direct implications on Public Health.

14 Implications for Children and Young People

- 14.1 It is not considered that the recommendations made in this report have any direct implications for Children and Young People.

15 Other Implications (Please Specify)

- 15.1 None.

16. Risk Management

- 16.1 There is a reputational risk to CEC in not being able to resolve this matter by agreement with CTC and there are the associated costs of resolving the matter via either arbitration or litigation.
- 16.2 If the approvals requested in this report and not given then the likely outcome would be that the matter is referred to an Arbitrator to determine the outcome, which could result in significant costs being incurred by CEC if it's position is ultimately not supported by the Arbitrator.

17 Access to Information/Bibliography

- 12.1 Please contact the report writer for any supporting information required.

Contact Information

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