

# Cheshire East Council

## PORTFOLIO HOLDER REPORT

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**Report of:** Executive Director - Place

**Subject/Title:** Crewe Youth Club, Mirion Street, Crewe

**Portfolio Holder:** Portfolio Holder for Housing, Planning and Regeneration

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### 1. Report Summary

- 1.1 The above site is owned by Crewe Youth Club (the Club) with Cheshire East Council (CEC) benefiting from restrictive covenants on the land preventing any use other than a community/youth centre and contained in a Conveyance dated 30<sup>th</sup> March 1961. The site is currently derelict following a number of arson attacks on the building and the Club does not have the necessary funds to re-build the site in order to continue to provide youth services from the building
- 1.2 The Club have requested that CEC agree to vary the use in the covenants in order to allow them to sell part of the site to the Jehovah's Witness Congregation for Crewe (JWs), for a new, larger Kingdom Hall to be built. This is to be part of a land swap arrangement with the Club, the JWs take on part of the club site to erect a new Kingdom Hall and a new parking area. The adjacent JWs site and existing Kingdom Hall building being transferred to the Club, for them to re-invest the balance of sale monies payable from the JWs into the existing Kingdom Hall building in order to refurbish and re-open as a youth club. The proposal for the Club includes new separate parking area and sports facilities for the Youth Club.
- 1.3 Varying the covenants to include a wider use on the land incurs an uplift in land value of which CEC would be entitled to take the benefit of as a capital receipt. The Club are requesting that the capital receipt be foregone by CEC and it be reinvested in the refurbished new Youth Club to enable the club to acquire the neighbouring building from the JWs as part of this land swap arrangement and the two sites be regenerated for the local community and the Youth Club re opened in the newly refurbished building.

### 2. Recommendation

- 2.1 That CEC agree to modify the Covenants in order to allow the Club to sell part of their site to the adjacent landowners JW's for that use/purpose only and in return for a payment of £1.00 (one pound) foregoing any consideration payable for the uplift in

value on the change of use. The uplift in value therefore being an undervalue to the Council.

- 2.2 This on the basis that the undervalue and any additional proceeds of sale be reinvested by the Youth Club into the future provision of youth services from the existing Kingdom Hall Building and retained proportion of the site. The existing covenants would then be applied to the new Youth Club which restricts the use of the Site to a Community/Youth Club use only . The JWs would have the benefit of the modified covenant with CEC retaining the covenant on the land restricting it to the Kingdom Hall use only (subject to agreement).
- 2.3 Authority is sought for CEC to enter into any necessary legal documentation in order to vary or modify the Covenant by agreement and then to subsequently enter into a new Deed of Covenant which binds the (retained) Youth Club Site by way of a S.33 (positive) Covenant over the Site restricting its use to that of "Youth Club/Community Use" only.
- 2.3 The proposed release/modification of the Covenant will also require the Crewe Youth Club to agree to an Overage provision which will bind the new youth club/community building. In the event that the club decide to sell the site at any time in the future then CEC shall be entitled to a 50% share of the proceeds of sale. This condition forms part of the agreement in order to protect the financial interests of CEC as this proposal involves CEC foregoing a Capital Receipt now.

### **3. Reasons for Recommendation**

- 3.1 The site is derelict following an arson attack on the building and the Club does not have funds to re-build. The site is continually subject to vandalism and is currently listed on the Fire Service "at risk" register.
- 3.2 There have been long standing discussions between the Club and CEC about getting the site back into an economic use and for a new youth centre to be built in order to provide youth services from the site.
- 3.3 Representatives from local employer Bentley have been assisting the Trustees in respect of delivering a new youth centre and the Club are currently taking advice from solicitors as to any methods to safeguard the sale proceeds assuming the Council is prepared to modify the covenant.
- 3.4 Crewe Youth Club is a registered Charitable Incorporated Organisation. The proceeds of sale shall be vested in the Charity and must be controlled in accordance with the charitable aims and that will be at the discretion of the Trustees who ultimately are answerable to the Charity Commission.

### **4. Other Options Considered**

- 4.1 The Club previously anticipated that they would sell the site to an affordable housing developer who would in turn build out a new youth centre as part of a development. However, it has since been confirmed that this is not considered to be viable on the basis that the new facility was costed up above £500,000 with the residual land value substantially below this sum. Therefore the modification of the Covenants to allow affordable housing only has proved to be unfeasible for the club.

## 5. Background

5.1 The Covenants requiring modification are set out below:-

***(1)“Not to use the land hereby conveyed or any part thereof or any building or buildings erected or to be erected thereon or on any part thereof for any purposes whatsoever other than in connection with the furtherance of the aims and objectives of the Crewe Youth Centre namely to help and educate boys and girls through their leisure time activities so as to develop their physical mental and spiritual capacities”***

***(2) “Not to use the land hereby conveyed or any part thereof or any buildings erected or to be erected thereon or any part thereof for the purpose of carrying on any profit making object undertaking or activity (other than in connection with any activities designed to raise funds for the said Centre where the entire financial or other proceeds of such activities are wholly received by an applied to further the aims and objects of the said centre)”***

5.2 The Club has now been approached by the adjacent landowner (Kingdom Hall – Jehovah’s Witness Congregation for Crewe) who are interested in purchasing part of the site. This would mean that the site would not provide any affordable housing and would result in a new religious facility being constructed on the land.

5.3 CEC is advised that the prospective purchaser (Kingdom Hall – Jehovah’s Witness Congregation for Crewe) would be willing to provide the Club with their existing (adjacent premises) building as part of the acquisition in order to allow the Club to function in this area and avoid the cost of constructing a new youth club facility.

5.4 Given that the affordable housing option proved to be unviable (in terms of paying for a new youth facility) the Club have now requested the modification of the covenants to allow a wider use (Religious use) on part of the site to be released to enable the sale to JW’s and for their proposed use.

5.6 The Club may be forced to market the property under their fiduciary duty (as controlled by the Charity Commission).

5.7 A recently commissioned independent valuation of the Covenants suggests that the removal or variation of the Covenant would represent a level of consideration between £20,000 and £55,000. It is proposed that CEC forgoes the consideration due to the perceived benefits arising from the proposed new youth facility. Especially given the dilapidated and dangerous condition of the site and the Club currently have no funds available to remedy without this contribution from CEC.

5.8 CEC will require authority to enter into any necessary legal documentation in order to vary or modify the Covenant by agreement and then to subsequently enter into a new Deed of Covenant which binds the (retained) Youth Club Site by way of a S.33 (positive) Covenant over the Site restricting its use to that of “Youth Club/Community Use” only.

5.9 The proposed release/modification of the Covenant will also require the Crewe Youth Club to agree to an Overage provision which will bind the new youth club/community building. In the event that the club decide to sell the site at any time in the future

then CEC shall be entitled to a 50% share of the proceeds of sale. This condition forms part of the agreement in order to protect the financial interests of CEC as this proposal involves CEC foregoing a Capital Receipt now.

## **6. Wards Affected and Local Ward Members**

6.1 Crewe East Ward

Councillor Clair Chapman

Councillor Suzanne Brookfield

## **7. Implications of Recommendation**

### **7.1. Policy Implications**

7.1.1. None.

### **7.2. Legal Implications**

- 7.2.1 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.
- 7.2.2 In dealing with a request to agree to a variation or a modification of a restrictive covenant the Council's approach mirrors those for a disposal of land pursuant to s123 of The Local Government Act 1972, which sets out that the Council can dispose of land subject to it being at the best consideration that can reasonably be obtained, which is not the case in these circumstances.
- 7.2.3 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, as in this case and subject to those powers being exercised in line with public law principles.
- 7.2.4 The Council has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 7.2.5 All disposals must comply with the European Commission's State aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In this case the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).
- 7.2.6 In addition to the above the Council will take further legal advice in relation to the correct method of legal documentation to ensure that any receipt foregone for the purpose of facilitating the development of the new Youth Club is either secured against the new Youth Club or appropriate covenants are entered into and bind the new site to ensure, as far as possible, the future use of the new Youth Club as set out in this report.

### **7.3. Financial Implications**

7.3.1. The agreement to modify the Covenant will require Cheshire East Council to forego a potential Capital Receipt of between £20,000 and £55,000. This has not been previously factored into any income projections for future capital receipts.

### **7.4. Equality Implications**

7.4.1 Not applicable.

### **7.5. Rural Community Implications**

7.5.1. Not applicable.

### **7.6. Human Resources Implications**

7.6.1. Not applicable.

### **7.7. Health and Wellbeing Implications**

7.7.1. It is envisaged that the new Youth Cub Facility would include a new all weather pitch which would be beneficial on Health & Wellbeing grounds.

### **7.8. Implications for Children and Young People**

7.8.1 The Club is unable to provide youth facilities from the existing site due to the condition of the building. Therefore the modification of the Covenant would facilitate the future provision of youth services which would otherwise not be possible.

### **7.9. Overview and Scrutiny Committee Implications**

7.9.1.

### **7.10. Other Implications (Please Specify)**

7.10.1 Not applicable.

## **8. Risk Management**

8.1. Due to the visual appearance of the site and the continued arson attacks, the site is currently listed on the Fire Service “at risk” register. The site has consistently become more dangerous over time following continual vandalism to both the buildings and perimeter boundaries. As a result, there is a substantial amount of pressure locally from residents for the site to be dealt with and redeveloped.

- 8.2. There is a risk that the Covenant is modified and the site remains undeveloped or that the future of the Youth Club cannot be secured.

## **9. Access to Information**

- 9.1. Please find attached Title Plan – CH630499

## **10. Contact Information**

Contact details for this report are as follows:

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