

# CHESHIRE EAST COUNCIL

## Cabinet

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| <b>Date of Meeting:</b>  | 20 <sup>th</sup> August 2012  |
| <b>Report of:</b>        | Arthur Pritchard – Assets Manager   |
| <b>Subject/Title:</b>    | Transfer of the former Broad Street School, Crewe                             |
| <b>Portfolio Holder:</b> | Cllr Jamie Macrae – Portfolio Holder for Prosperity and Economic Regeneration |

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### 1.0 Report Summary

- 1.1 To consider a proposal to relocate the Cheshire Academy of Integrated Sport and Arts from their existing premises at Macon Way, Crewe to the former Broad Street School, Crewe.
- 1.2 The Academy currently operates from Council owned premises on Macon Way, Crewe (Appendix 1 – Site Plan). The terms of occupation are historical dating back to an agreement signed in 1994 with a rent payable to the Council of £2,000 per annum.
- 1.3 The existing premises are in poor condition with expenditure in excess of £300,000 required to bring it up to an acceptable condition. In addition, the work of the Academy has significantly expanded since its foundation in 1993. The existing building no longer provides either the scale or quality of accommodation the Academy needs to fulfil its role in the community.
- 1.4 The Academy occupies a small part of a much larger Council owned site on Macon Way. The remainder of the site is occupied by the Council providing office accommodation primarily for use by Care 4CE. The site is of considerable strategic importance to the Council occupying a gateway location at the Macon Way roundabout in close proximity to the railway station, former Royal Mail site and the fire station.
- 1.5 The Academy has approached the Council with a proposal to relocate to the Former Broad Street School in the West Coppenhall and Grosvenor area of Crewe (Appendix 2 – Site Plan).
- 1.6 The decision required to transfer the former Broad Street School to the Academy will amount to a community asset transfer at less than best consideration and, therefore, amounts to a choice between:
  - 1.6.1 Expenditure on other services made possible as a result of a ‘commercial’ or best-price disposal of the asset,

1.6.2 The benefits generated to the Community and/or the Council by the transfer of the asset to the third sector.

## **2.0 Decision Requested**

- 2.1 That a leasehold interest for a term of more than 15 but no more than 25 years of the former Broad Street School, Crewe be granted on full repairing and insurance terms to the Cheshire Academy of Integrated Sport and Arts.
- 2.2 That the Strategic Director for Places and Organisational Capacity, Director for Finance and Business Services and Borough Solicitor be given delegated authority to finalise the details of the lease in accordance with the procedures and controls detailed in this report.
- 2.3 That the required consents for the proposed lease of the former Broad Street School be sought from the Secretary of State for Education.

## **3.0 Reasons for Recommendations**

- 3.1 In view of the important contribution made by the Academy to the delivery of the Council's wider corporate objectives it is essential that every effort is made to ensure the long term viability of the Academy in order to protect those vulnerable members of our community who rely on the services it provides.
- 3.2 In the absence of the Academy, the Council would be required to source and fund alternative provision. Any failure to meet the needs of the vulnerable children's and young adult's groups who use the Academy's services would place the Council at great reputational risk.
- 3.3 The Academy, despite its high profile contribution to the community of Cheshire East, receives no central funding and is entirely dependent for its revenue on fees, fundraising, donations and individual project grants. The limitations of the current building only serve to exacerbate the funding issue, precluding certain grant applications and the ability to secure relevant quality endorsements such as OFSTED and 'Club Mark'.
- 3.4 The Academy's existing premises at Macon Way are no longer suitable for their needs. The premises are in an extremely poor state of repair suffering from a number of inherent problems due to a lack of investment over their period of occupation.
- 3.5 In addition, the work of the Academy has significantly expanded since its foundation in 1993. The existing building no longer provides either the scale or quality of accommodation the Academy needs to fulfil its role in the community. The existing building footprint, even allowing for

potential refurbishment and enhancement, is no longer sufficient for their needs.

- 3.6 Works required to return the Macon Way building to an acceptable standard are estimated to cost in the order of £300,000. The works would not, however, address the sufficiency issue referred to in 3.2 above.
- 3.7 The existing Macon Way site is a relatively small part of a much larger Council owned site on Macon Way. The remainder of the site is occupied by the Council providing office accommodation primarily for use by Care 4CE. The site is of considerable strategic importance to the Council occupying a gateway location at the Macon Way roundabout in close proximity to the railway station, former Royal Mail site and the fire station.
- 3.8 Consequently the Council is unable to commit to a long-term occupational agreement in respect of the Academy's existing premises.
- 3.9 In view of the strategic ambitions for the Macon Way site and the scale of the investment required to bring the accommodation up to an acceptable standard, it is not considered possible to maintain the Academy's presence at their existing location.
- 3.10 Given the importance of the contribution made by the Academy to the delivery of the Council's wider corporate objectives, alternative options have been considered and it is now proposed that the Academy be relocated to the former Broad Street School.
- 3.11 The former school is currently vacant. Although valued in the order of £300,000, a recent marketing exercise generated a poor response and interest in the premises continues to be low. The Council is incurring significant holding costs (2011/12–circa £65,000), particularly in relation to the security of the building. It is not expected that a buyer for the property will be found in the short to medium term. In the meantime, the condition of the building continues to deteriorate.
- 3.12 The proposed relocation of the Academy to Broad Street would serve to mitigate the Council's responsibility for ongoing holding costs. An assessment of the condition of the building has identified the need for essential works of repair prior to any occupation of the building. Detailed costings amount to £101,333, primarily in relation to the roof and consequential water damage to the internal fixtures and fittings and the electrical installation. Payback on this investment is less than 2 years given the £65k holding costs per annum and the works required recently following break ins to the building.
- 3.13 The works would be required irrespective of the needs of any potential user and should be considered against the ongoing liability in respect

of holding costs. The cost of the works required prior to occupation will met from the existing capital spend allocation for this financial year.

- 3.14 On the basis that the services provided to children and young adults by the Academy are of significant benefit to the community and the Council, it is proposed that the former Broad Street School be transferred to the Academy in accordance with the Council's policies in respect of community asset transfer.
- 3.15 The proposed transfer will take the form of a long lease of sufficient duration to allow the Academy to secure external investment. The lease will contain such provisions necessary to address the risks identified elsewhere in this report and will be made on a full repairing and insuring basis thereby ensuring that the Council does not incur any additional expenditure over and above that already identified elsewhere in this report.
- 3.16 The proposed lease will also provide the Council with the means to ensure that the asset continues to contribute to the Council's corporate priorities throughout the term.

#### **4.0 Wards Affected**

- 4.1 Crewe East  
Crewe North

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

- 5.1 Crewe East - Cllr Margaret Martin  
Cllr David Newton  
Cllr Chris Thorley.
- Crewe North - Cllr Mo Grant

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

- 6.1 Health

##### **6.1.1 Public Health Outcomes**

- Improving the Determinants of Health - This transfer will provide vulnerable user groups a secure and permanent environment for their activities
- Social connectedness - The Broad Street location will provide greater opportunities for social integration with the wider community and provide opportunities for other user groups to access and use the facilities.

### 6.1.2 Health Improvement

- Regular exercise and involvement in sport can make a significant contribution to reducing childhood and adult obesity and reducing the incidence of cardio-vascular disease and diabetes in later life.
- Obesity can be a significant health problem in children with additional needs and reduced mobility.
- Regular exercise, social interaction and supported activities have a positive impact on the mental health and well-being of both individuals using the facility and their carers.

## **7.0 Financial Implications (Authorised by the Director of Finance and Business Services)**

- 7.1 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 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
- 7.3 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. It is unlikely that such a community facility transfer will raise any State aid issues for the reasons explained in the Legal Implications.
- 7.4 Therefore, in terms of this specific proposal, there is a need to set the financial implications in the context of the contribution made by the Academy to the delivery of the Council's wider corporate objectives. It is considered that the contribution made by the Academy in terms of disabled provision for both children and young adults is significant and that any reduction in that provision would need to be re-provided, and funded, by the Council.
- 7.5 As referred to elsewhere in this report, the Academy's existing premises at Macon Way are in an extremely poor condition. The poor state of the accommodation is already directly impacting on the

Academy's ability to deliver the level of service expected by users and controlling authorities, and will ultimately result in the need for the Council to seek alternative means of provision.

- 7.6 Due to the condition of the building, and its inherent unsuitability, the cost of the works required to bring it up to an acceptable standard, is estimated to be in excess of £300,000. Such a level of expenditure cannot be justified without a full consideration of the alternative options available to the Council in order to ensure the continuation of the services provided to the community by the Academy. Nor should any decision be taken in isolation, ignoring the wider strategic importance of the Macon Way site.
- 7.7 The former Broad Street School is vacant. Although valued in the order of £300,000, a recent marketing exercise generated a poor response and interest in the premises continues to be low. The Council is incurring significant holding costs (2011/12—circa £65,000), particularly in relation to the security of the building. It is not expected that a buyer for the property will be found in the short to medium term. In the meantime, the condition of the building continues to deteriorate.
- 7.8 The proposed relocation of the Academy to Broad Street would serve to mitigate the Council's responsibility for ongoing holding costs. An assessment of the condition of the building has identified the need for essential works of repair prior to any occupation of the building. Detailed costings amount to £101,333, primarily in relation to the roof and consequential water damage to the internal fixtures and fittings and the electrical installation.

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

- 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.
- 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. It is unlikely that the proposed letting at a peppercorn rent for the purposes of delivering essentially community services, raises State aid difficulties for the following reasons:
  - 8.2.1 The Academy is a charitable body and will use the premises for community benefit purposes The structure proposed is more or less a classical "flow through" structure by which the real benefit of the aid involved will pass through the Academy and on to the

real beneficiaries, which are the general public (and in certain cases disadvantaged members of the general public at that). The end beneficiaries themselves are not economic undertakings capable of receiving State aid. The Academy itself will be seen to have the aid flow through it and thus will not be a beneficiary itself. This thinking derives from a European Commission Decision of 2005 generally known as “German Incubators”.

8.2.2 For the “flow through” principle to apply the Academy has to be a not for profit body that recycles any income derived for the further purposes of delivering the community services, the asset being funded must be maintained for the purpose intended for at least 15 years, and the funding must facilitate the end beneficiaries receiving benefits via free or discounted services.

8.2.3 Even if the “flow through” principle did not apply this transfer at undervalue would be low risk in State aid terms based on a balance of the following additional considerations:

- the amount of benefit involved is relatively low and is not the sort of amount that would trouble the European Commission even if it were to be considered State aid;
- arguably the transaction is not capable of affecting trade between Member States, which is a necessary condition for a finding of State aid. The European Commission is notoriously conservative in finding no effect on trade but realistically in this case there is no possibility of inter state trade being affected; and
- arguably the Academy is not an economic undertaking capable of receiving State aid. If it operates on a purely “free at the point of delivery” basis then it would be clear that it is not an undertaking, but if it charges limited amounts then arguably it is acting as a going concern.

8.2.4 Based on a balance of all the above it is not considered there should be any real concern over State aid for this project but we recommend a Lease for a term of at least 15 years restricting the use of the premises to use for community benefit purposes and that the Council reserves the right to end the Lease if there is found to be unlawful State aid.

8.2.5 The fact of essential repairs being undertaken by the Council at its cost is not considered to be aid at all as the Council would undertake the repairs in order to allow any occupation of the building and these repairs improve the asset.

8.3 In transferring assets the Council must behave prudently to fulfil its fiduciary duty.

- 8.4 From 1<sup>st</sup> February 2012, Section 63 of the Education Act 2011 inserted a new Schedule 1 into the Academies Act 2010 stating that the consent of the Secretary of State for Education is required for the sale or transfer of land which the local authority has held as a school in the last eight years.
- 8.5 Although, Secretary of State consent to dispose was obtained prior to the marketing of the site in 2011, the consent is no longer considered to be valid and, therefore, any proposed transfer of the former Broad Street School will require two consents from the Secretary of State for Education.
- 8.6 An application for consent under Schedule 1 carries with it the risk that the Secretary of State will take the land for an academy or free school which requires land in the area
- 8.7 A second consent from the Secretary of State for Education is required for the disposal of Broad Street School In respect of the playing fields. The application is under Section 77 of the School Standards and Framework Act 1998. The risk to the Council is that the Secretary of State refuses consent.

## **9.0 Risk Management**

- 9.1 That the proposal is viable and sustainable in the long term and that it creates wide social value and benefits which support the corporate aims and priorities of the Council as set out in adopted policy.
- 9.2 The capacity of the Academy to acquire and manage the asset, and to meet capital and ongoing revenue costs in order to demonstrate the ongoing sustainability of the project
- 9.3 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.
- 9.4 That Secretary of State consent under Schedule 1 of the Academies Act 2010 is refused on the basis that the land is required for an academy or free school which requires land in the area
- 9.5 That Secretary of State consent under Section 77 of the School Standards and Framework Act 1998 is refused.

## **10.0 Background and Options**

- 10.1 The Cheshire Academy of Integrated Sport and Arts is a charitable organisation based in Crewe which works with both children and young adults with disabilities. The organisation was founded in 1993 and now provides care and support for those with disabilities and their extended



families, gaining national recognition for its work with the award of the Queens Award for Voluntary Service in 2007.

- 10.2 The Academy provides volunteering opportunities including the provision of placements for Manchester Metropolitan University (MMU) degree and masters degree students. The Academy also provides a child development centre called LEAP which works with children who have more complex needs.
- 10.3 The Academy is also recognised for its contribution in the field of disability sport. Academy students regularly represent Great Britain on an international stage, providing champions in such disciplines as bocce, gymnastics and athletics at a National, World and Olympic level.
- 10.4 At a regional level, the Academy excels in as many as eleven different sports, including football and athletics, and is at the centre of events as part of the Special Olympics Cheshire East. Other social and community activities include the provision of disability accessible youth clubs, the Cheshire Deaf Club and alternative therapy sessions.
- 10.5 The Academy currently operates from Council owned premises on Macon Way, Crewe (Appendix 1 – Site Plan). The terms of occupation are historical dating back to an agreement signed in 1994 with a rent payable to the Council of £2,000 per annum.
- 10.6 The existing premises are of timber construction and are suffering from a number of inherent problems due to a lack of investment over the period of occupation by the Academy. In brief, the building would not pass any normally accepted fitness standards and any further deterioration could begin to pose a health risk to people who attend and work in the building.
- 10.7 The timber framing to the external elevations is suffering from extensive rot, resulting in some serious settlement and the risk of glazing panels falling out – with the inevitable risk that this can pose. The roof is in a poor condition and suffers from numerous leaks – some even over electrical distribution boards, needless to say not an acceptable situation.
- 10.8 The condition of the existing building is considered to be so poor that, in order to bring it up to an acceptable standard, expenditure in excess of £300,000 would be required. In addition, the Academy would be forced to relocate to temporary accommodation whilst any remedial works were undertaken.
- 10.9 In addition to the costs associated with a refurbishment of the existing premises at Macon Way, there are a number of other factors which have prompted a search for an alternative home for the Academy:

- 10.9.1 The work of the Academy has significantly expanded since its foundation in 1993. The existing building no longer provides either the scale or quality of accommodation the Academy needs to fulfil its role in the community. The existing building footprint, even allowing for potential refurbishment and enhancement, is no longer sufficient for their needs.
- 10.9.2 The Academy, despite its high profile contribution to the community of Cheshire East, receives no central funding and is entirely dependent for its revenue on fees, fundraising, donations and individual project grants. The limitations of the current building only serve to exacerbate the funding issue, precluding certain grant applications and the ability to secure relevant quality endorsements such as OFSTED and 'Club Mark'
- 10.9.3 The Academy occupy a small part of a much larger Council owned site on Macon Way. The remainder of the site is occupied by the Council providing office accommodation primarily for use by Care 4CE. The site is of considerable strategic importance to the Council occupying a gateway location at the Macon Way roundabout in close proximity to the railway station, former Royal Mail site and the fire station.
- 10.10 The Academy has approached the Council with a proposal to relocate to the Former Broad Street School in the West Coppenhall and Grosvenor area of Crewe (Appendix 2 – Site Plan). The proposal has been given the title, 'The Broad Street Project' and, whilst the building itself addresses the fundamental issues of scale and quality of environment, it could also be argued that its location does put the Academy in an appropriate environment for the services it seeks to provide.
- 10.11 The former Broad Street School is situated in the geographical area of West Coppenhall and Grosvenor, which is officially shown to be the area with the highest index of deprivation score in the whole of Cheshire East. There are few facilities in the area for the local community to enjoy.
- 10.12 The Broad Street Project is intended to become a hub and focus for the local community providing a new venue for the activities currently undertaken at Macon Way, but in addition providing scope for future expansion. The Academy's draft business plan includes proposals for a community café and a gardening area with a clear focus on providing a wider range of support to the local community.
- 10.13 The former Broad Street School comprises of some 12,718 sq.ft (GIA) occupying a site extending to 0.66 acres with extensive frontage to Broad Street and McLaren Street. The site has the potential for reuse for a number of purposes but is considered most suitable for

redevelopment for housing, being situated in an established residential area.

- 10.14 The site was extensively marketed in 2011 but failed to generate an acceptable offer. It remains on the market and has been recently valued at £300,000. Holding costs for the Authority are significant due in the main to ongoing security issues at the site.
- 10.15 An assessment of the condition of the building at Broad Street has identified the need for essential works of repair prior to any future occupation of the building. Detailed costings amount to £101,333, primarily in relation to the roof and consequential water damage to the internal fixtures and fittings and the electrical installation. If the proposal to relocate the Academy is agreed or, indeed, if the building is to be occupied at all, this essential expenditure will need to be financed from the existing capital spend allocation for this financial year.
- 10.16 A decision to facilitate the move of the Academy from Macon Way to Broad Street therefore carries with it significant financial implications and a degree of risk which needs to be balanced against the perceived benefits to the Council, including an assessment of the contribution the proposal will make to the delivery of the Council's wider Corporate objectives.
- 10.17 Local authorities are able to dispose of land if the conditions of the 2003 Consent apply to secure the promotion or improvement of the economic, social or environmental well-being of an area.
- 10.18 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 the third sector. In assessing proposals for asset transfer, the council will measure the relative benefits and risks of these two options in order to make a decision
- 10.19 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
- 10.20 Therefore, in making an asset transfer decision, local authorities should:
  - 10.20.1 Have regard to their community strategy.

- 10.20.2 Assess the likely amount of the undervalue
  - 10.20.3 Understand what community benefits will be realised by transfer and how the interests of local people will be better served.
  - 10.20.4 Have regard to business plan and financial viability of the community based organisation's plans.
  - 10.20.5 Understand the State Aid implications.
  - 10.20.6 Assess market interest.
- 10.21 The spectrum of transfer options can range widely, and can include a freehold or a long lease. However, for most transfers, where grants or loans are required for capital development, the length of tenure will need to be long enough to secure external investment. Therefore, community asset transfer is usually taken to mean a long lease, of at least 25 years, or a freehold.
- 10.22 The Council will generally effect community asset transfers on the basis of short/medium and long term leases. It will not generally transfer the freehold of its assets. The extent of tenant's responsibilities under the lease, together with the level of any prospective rent, will be influenced/informed by individual circumstances and the length of lease involved.

## **11.0 Access to Information**

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

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Appendix 1 – Site Plan – Cheshire Academy of Integrated Sport & Arts Existing Premises at Macon Way, Crewe  
Appendix 2 – Site Plan – Former Broad Street School, Crewe