

## **CHESHIRE EAST COUNCIL**

### **REPORT TO PORTFOLIO HOLDER – REGENERATION AND ASSETS**

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**Report of:** Executive Director of Economic Growth and Prosperity  
**Subject/Title:** Transfer of Broken Cross Pavilion (Jasmine Park), Macclesfield  
**Date of Meeting:** 13 July 15  
**Portfolio Holder:** Cllr Don Stockton

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#### **1.0 Report Summary**

1.1 The purpose of this report is:-

- 1.1.1 to provide consent to the freehold transfer of land and buildings known as Broken Cross Pavilion (Jasmin Park), Macclesfield, edged red on the plan attached to the Council from Taylor Wimpey Plc under the terms of a Section 106 agreement dated 24<sup>th</sup> February 2006 and subsequent variation dated 2<sup>nd</sup> December 2011 between Taylor Wimpey Plc and Cheshire East Council and
- 1.1.2 to simultaneously grant a 125 year lease, at less than best consideration, to Jasmine Park Community and Sports Centre Limited or such other named Charity or organisation as may be created and submits admissible business plan to take over the management of the pavilion and associated grounds as edged red on the attached plan. The Council will retain land and responsibility of the play areas and walkways shaded blue on the plan attached.

#### **2.0 Decision Requested**

2.1 It is recommended:

- 2.1.1 THAT the property known as the Broken Cross Pavilion (Jasmin Park), Macclesfield and surrounding land as shown edged red on the attached plan is transferred freehold from Taylor Wimpey Plc under the terms of a Section 106 agreement dated 24<sup>th</sup> February 2006 and subsequent variation dated 2<sup>nd</sup> December 2011 between Taylor Wimpey Plc and Cheshire East Council to Cheshire East Council.
- 2.1.2 A 125 year lease of the area edged red on the attached plan is granted 'back to back' to Jasmine Park Community and Sports Centre Limited or an approved charity via a community asset transfer. The lease will be subject to the obligations held in the section 106 agreement, and also that the company will transfer to charitable status within 6 months of the transfer. The tenant will also take the benefit of 65% of the £120,000 or such sum once indexed as a commuted sum for maintenance. The Council will retain land and responsibility of the play areas and walkways

shaded blue on the plan attached. The 125 lease will be subject to (a) a 25 year break option in favour of the tenant and (b) in the event the charity ceases to exist the lease will determine and the demise will revert back to the Council at nil consideration.

### **3.0 Reasons for Recommendations**

- 3.1 The S106 agreement requires the site shown edged red on the attached plan be transferred from Taylor Wimpey Plc to the Council. The conditions of the S106 agreement are now met and a completion certificate was issued on 2<sup>nd</sup> April 2015.
- 3.2 The Section 106 agreement includes provision of a maintenance sum which is triggered on transfer to be utilised by the Council for the ongoing repair and maintenance of the open space and Pavilion (including Car Park and Pitches) for such period as the contribution covers. The maintenance sum is specified within the S106 as being £120,000 which will be subject to Indexation; this figure is split as 35% for open space and 65% for the pavilion building.
- 3.3 Jasmine Park Community and Sports Centre Limited have requested that the asset is transferred to them under a Community Asset transfer by way of a long lease. The lease will include restrictions which will covenant Jasmine Park Community and Sports Centre Limited to adhere to the specific details of the S106 agreement. Furthermore there will be obligations to adhere to Safeguarding Policies, Health and Safety Policies, Volunteer Policies and any other statutory Policies which the Landlord deems necessary to run the facility.
- 3.4 Jasmine Park Community and Sports Centre are currently established as a Limited Company. There will be a requirement to restructure this company to a model, e.g. charitable status which will best fit the needs to the community and a business plan approved by the Executive Director for Economic Growth and Prosperity prior to completing the lease.

### **4.0 Wards Affected**

- 4.1 Broken Cross and Upton

### **5.0 Local Ward Members**

- 5.1 Councillor Liz Durham  
Councillor Martin Hardy

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

- 6.1 Cheshire East Council has published policies in relation to the provision of public open space and looks to secure facilities for all our communities to agreed standards.

- 6.2 Cheshire East Council's "Ambition for All - Sustainable Community Strategy (2010 – 2025)", states; Cheshire East is a prosperous place where all people can achieve their potential, regardless of where they live. We have beautiful productive countryside, unique towns with individual character and a wealth of history and culture. The people of Cheshire East live active and healthy lives and can get involved in making their communities safe and sustainable places to live.
- 6.3 Local Plan Core Strategy: Cheshire East Council is currently drafting a new Local Plan. The Local Plan includes a summary of local infrastructure aspirations which include new public parks and open space facilities identified through local consultations.
- 6.4 Our Green Space Strategy (2013) considers the provision of new good quality green space and the proactive management of existing green space to conserve an important legacy for Cheshire East's communities. Our larger parks contribute significantly towards making our towns unique with individual character and their wealth of history and culture. They form a vital component of the essential infrastructure for supporting the requirements of the local and wider community. Parks will need to constantly improve to reflect changing needs as safe, clean, healthy and sustainable, places where the local community can meet, exercise and enjoy themselves, accessible places for all including the disabled and the disadvantaged.
- 6.5 The new park at Broken Cross, Macclesfield (Also known as Jasmine Park) has been secured by the Council to provide public open space and outdoor recreational facilities for this local community. It is best practice that the local community should be allowed to be fully engaged in the management and maintenance of their local parks. This decision to undertake a community asset transfer to a local community charitable trust is a mechanism to secure the community's engagement for the long term.

## **7.0 Financial Implications**

- 7.1. This will be a community asset transfer at nil consideration. This will be at less than best consideration however under the general disposal consent, members are requested to approve the undervalue in the region of £258,800 for the land and pavilion transferring by way of lease.
- 7.2 The site will be handed over to the Council with a commuted sum for long term maintenance amounting to £120,000 (subject to indexation) of which this will be split to reflect the facilities being retained by the Council and those being leased out, payable on completion of the lease and acceptance of their business plan for running and maintaining the facilities within the demise of the lease.
- 7.3 It is proposed that the Council will retain 35% of the commuted sum and transfer the remaining 65% to the leaseholder.

- 7.4 The Council's retained areas will be supported by the retained proportion of the commuted sum and will be managed by Ansa on behalf of the Council as operational portfolio.

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

- 8.1 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.
- 8.2 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 £2million consent to the disposal is required from the Secretary of State.
- 8.3 The Council has the power to grant a lease of the land pursuant to s123 of The Local Government Act 1972 subject to any disposal for 7 years or more being at the best consideration that can reasonably be obtained.
- 8.4 Notwithstanding the above powers the Council has a fiduciary duty to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 8.4 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 such cases the Council 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 £155,000 (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).
- 8.5 Acquisitions are also subject to similar means of accountability to include best value being obtained. State Aid considerations may fall to be considered, and in some transactions the complexity may involve procurement legislation, and application of the contract procedure rules, for the due diligence information/material, depending on each particular set of circumstances. Here the acquisition is at nil cost by virtue of an s106 agreement being a planning obligation.

## **9.0 Risk Management**

- 9.1 There is a risk that another community group may object to the off market transaction directly to Jasmine Park Community and Sports Centre Limited however this is considered a very low risk given there was not any other

charity or group willing to come forward to take on the site under the terms on offer.

## **10.0 Background**

- 10.1 In February 2006, Macclesfield Borough Council granted planning permission for the redevelopment of Henbury High School for the erection of 123 dwellings (05/1184P). The permission is subject to a section 106 agreement dated 24<sup>th</sup> February 2006 and subsequent variation dated 2<sup>nd</sup> December 2011, which provided for the provision of Open Space which includes an area of open land, a play area, a multi use games area, a pavilion comprising changing facilities, community rooms, car park and Sports England standard pitches.
- 10.2 The development was enabling development and the capital raised from the sale of the school land for the housing development was utilised by the former Cheshire County Council to help fund the Macclesfield Learning Zone development and relocation of the synthetic turf football pitch to Fallibroome High School (now The Fallibroome Academy).

## **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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