

## **CHESHIRE EAST COUNCIL**

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

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**Report of:** Property Services Manager

**Subject/Title:** Cheshire Extra Care Catering Sub Leases

**Date of Meeting:** 29<sup>th</sup> March 2016

**Portfolio Holder:** Councillor Don Stockton

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#### **1.0 Report Summary**

- 1.1 The purpose of this report is to seek approval to Cheshire East Council (“CEC”) agreeing Heads of Terms on behalf of both CEC and Cheshire West and Chester Council (“CWAC”) in respect of five underleases required to facilitate the operation of the catering facilities within Cheshire Extra Care developments.
- 1.2 In 2007 five Extra Care Housing facilities were commissioned by Cheshire County Council and the facilities were leased to Manchester and District Housing. The Catering facilities are operated and financed by CEC and CWAC as successors to Cheshire County Council. The facilities should have been leased back to the operators to facilitate the catering provision. It is now proposed to procure external providers for the catering service. As CEC are the lead authority for the project it falls to them to regularise the position.

#### **2.0 Decision Requested**

- 2.1 That CEC negotiates and agrees Heads of Terms on behalf of both CEC and CWAC in respect of the five underleases required to facilitate the operation of the catering facilities located within the Cheshire Extra Care developments in Crewe (Cheshire East) Handforth (Cheshire East) Middlewich (Cheshire East) Winsford (Cheshire West and Chester) Ellesmere Port (Cheshire West and Chester) and then for CEC to enter into underleases in respect of the properties located in Crewe, Handforth and Middlewich on terms and conditions to be determined by the Asset Manager and Director of Legal Services and to authorise the Director of Legal Services to draft, negotiate and agree the underleases and proceed to completion of the underleases.

#### **3.0 Reasons for Recommendations**

- 3.1 In 2007 five Extra Care Housing facilities were commissioned by Cheshire County Council. CEC are the lead authority for the project. Upon completion in 2009 the facilities were leased to Manchester and District Housing (who now trade as Your Housing) and the facilities themselves are operated by Advantage. The catering service within the developments were operated and financed by Cheshire County Council, and subsequently by their successors (CEC and CWAC). This includes the financing of light kitchen equipment, crockery, cutlery, food, cleaning materials and wages, and is currently being subsidised by the respective Councils. Advantage finance the utility costs and heavy equipment of the catering operation. It

was intended that the catering arrangements and the respective Council's use and management of these areas be documented by an underlease back to the Councils, detailing the terms of their occupation of the relevant sections of the buildings and any associated rights, however the underleases were not completed.

- 3.2 There is now a proposal to put the catering service out to tender and as a result there is a need for CEC and CWAC to enter into underleases of the areas being used for the catering service first. This will regularise the current position (and the Councils occupation and use of the buildings) and allow a further sublease to be granted by the Councils to the successful party in the tender of the catering service, in respect of the areas which the successful bidder will occupy.

#### **4.0 Wards Affected**

- 4.1 Crewe – Crewe St. Barnabas  
Handforth – Handforth  
Middlewich - Middlewich

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

- 5.1 Crewe – Councillor Damian Bailey  
Handforth – Councillor Barry Burkhill, Councillor Dennis Mahon  
Middlewich – Councillor Simon McGrory, Councillor Michael Parsons,  
Councillor Bernice Walmsley.

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

- 6.1 There are no perceived Policy Implications.

#### **7.0 Financial Implications**

- 7.1 The immediate cost to CEC is the officer time putting these under leases in place. However, the longer term financial implication is that these leases being in place will give both Council's the opportunity to maximise the commercial aspects of the contract, in turn, reducing the net cost over the remaining years of the contract.

#### **8.0 Legal Implications (Authorised by the Director of Legal Services)**

- 8.1 CEC is authorised to enter into leases pursuant to s120 of The Local Government Act 1972 and s1 of The Localism Act 2011. In this case CEC will be taking an underlease of the relevant parts of the buildings (currently being occupied by the CEC) of the three properties located within Cheshire East from Manchester and District Housing (Your Housing).

It is assumed that the underleases will be granted at either a peppercorn or a nominal rent and will simply reflect the position as per our existing occupation and use of the properties.

Entering into the underleases will formalise the current arrangements and provide clarity in respect of the parties obligations in respect of the property and area being occupied. It will also enable CEC to enter into valid sub-leases of those areas with third parties should this be required in the future.

## **9.0 Risk Management**

- 9.1 The risks associated with the current arrangement include the possibility of the current catering staff being denied access to the catering facilities and potential liability issues arising from the lack of legal documentation reflecting the proper occupation and use of the catering facilities and the responsibilities for the same.

A further risk arises from the proposal to procure external catering services. Without suitable legal documentation reflecting the current use and the Councils ability to grant a sub-lease for a third party to provide the service third parties will be reluctant to bid and there is the possibility of a third party eventually acquiring rights over part of the property.

The proposal to enter into the underleases will regularise the current situation and address the access and liability issues in the documentation. They will also provide the basis upon which to grant further subleases to external catering providers in association with the procurement due to be exercised.

## **10.0 Background**

- 10.1 In the mid to late 2000s, Cheshire County Council commissioned Advantage to design, build and manage five extra care housing schemes across Cheshire. The first scheme opened in January 2009 and the final scheme in August that year. Beechmere (Crewe), Oakmere (Handforth) and Willowmere (Middlewich) are the three schemes located in Cheshire East and Hazelmere (Winsford) and Hollymere (Ellesmere Port) both in Cheshire West. On opening, the buildings were leased to Manchester & District Housing (the housing representative on the Advantage consortium). At the same time, arrangements should have been made to lease back the facilities required to run the restaurant and catering services, as these were to be run by Cheshire County Council and its successor councils. Unfortunately, these underleases were never completed. When both Councils started to look at putting their respective restaurant and catering services out to tender, it was realised that the underleases did not exist and needed to be put in place. It is proposed that these leases are put in place as soon as possible to reflect the current arrangements and to allow the Councils to sub-let the areas to external catering providers.

## **11.0 Access to Information**

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

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