

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	14 <sup>th</sup> March 2017
<b>Report of:</b>	Executive Director Place
<b>Subject/Title:</b>	Transfer of Former Manchester Metropolitan University (MMU) Campus in Alsager with Associated Sporting Facilities
<b>Portfolio Holder:</b>	Councillor Don Stockton – Regeneration Councillor Paul Bates – Communities & Health

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### 1.0 Report Summary

- 1.1. The purpose of this report is to seek approval for Cheshire East Council (CEC) to accept the freehold transfer of the land shown identified edged in red on the attached plan ("the Property") from David Wilson Homes (DWH) and complete a modification of contract and a back to back lease of the Property to Everybody Sport & Recreation Ltd (ESAR).
- 1.2. DWH have developed a proposal for the former Manchester Metropolitan University (MMU) Campus in Alsager. The proposal is to demolish all buildings on site and construct 407 new homes and sports and leisure facilities. The site as it stands incorporates currently vacant sports facilities which included; 6 senior grass football pitches (one floodlit for training purposes), 2 senior grass rugby pitches, 1 full-size floodlit sand based Artificial Grass Pitch (AGP), cricket square, 8 tarmacadam tennis courts (5 netball courts), 4-court sports hall, plus 2 x performance studios, 18 station fitness suite, old school gym and ancillary provision and a swimming pool. The proposal is to retain that leisure provision, in so far as possible, in accordance with the requirements of Sport England as part of the Planning process and to enhance this on top of normal s106 requirements. As part of their planning application DWH propose the laying out of new grass pitches, creating two artificial pitches (with associated floodlighting and fencing) and construction of a new pavilion, new changing rooms and parking area.
- 1.3. The proposal also includes a financial contribution to extend the existing gymnasium and to create 2 new health and fitness studios on a refurbished first floor at CEC's nearby Alsager Leisure Centre, which is leased to and managed by ESAR. Furthermore they propose to create new points of access onto Hassall Road and Dunnocksfold Road. CEC (in its capacity as Local Planning Authority) has resolved to grant planning permission to DWH for the development referred to above, subject to it signing an agreement pursuant to s106 of the Town and Country Planning Act 1990 providing for delivery of planning obligations by the developer of the land. The s106 Agreement will include (amongst other things) details of the completion of the agreed works to Alsager Leisure Centre, the payment of monies for improvements to Alsager

Leisure Centre and the details of the transfer of the leisure facilities being provided within the development to CEC.

## **2.0 Recommendation(s)**

- 2.1 It is recommended that Cabinet:
- 2.2 Approves the freehold transfer of the Property, from David Wilson Homes to the Council and the simultaneous lease of the Property from the Council to ESAR on terms to be agreed by the Assets Manager
- 2.3 Authorises the Asset Manager to provide Sport England with written confirmation that the Council will accept a transfer of the Property for the purposes of providing public open space and leisure facilities required as a result of DWH's planning application.
- 2.4 Notes that such facilities will be built on site by DWH and approved by the Council prior to transfer of the Property.
- 2.5 Agrees that the lease of the Property to ESAR will be conditional on a modification of the operating contract, for the remainder of the existing term (currently a ten year lease from 2014 with an option for a further 5 years) during which period ESAR will run the facilities on the Council's behalf.
- 2.6 Authorises the Director of Legal Services to enter into all legal documentation required to effect the transfer and the lease of the Property, including any licence agreements or deeds of covenant which may be required and to complete any variation/modification to the ESAR contract which may be required.

## **3.0 Other Options Considered**

- 3.1 There is no realistic alternative to the course of action proposed.

## **4.0 Reasons for Recommendations**

- 4.1 The indoor sports provision on the MMU site in Alsager is closed. The swimming pool closed in 2010 and the sports hall in 2012. The MMU requirement for outdoor provision has been relocated to other sites within the Borough. Although there is community use of the remaining provision it is clear that much of the existing demand is met by users travelling outside the Alsager area.
- 4.2 The DWH development will bring a major boost to leisure and sport in the area with an investment of over £4.8m in new facilities. In addition, it would bring forward a further £486,000 investment in the existing facilities at Alsager Leisure Centre.
- 4.3 The timing of provision and completion of the facilities will be governed by a s106 Agreement (as referred to earlier in the report) entered into by the

landowner, the developer and the Council (as Local Planning Authority) and thereafter will enable the public use and require the future maintenance of the facilities as per the attached Business Case.

- 4.4 Acceptance of responsibility for future maintenance and management of these facilities by the Council once developed will mean Sport England remove their formal objection to DWH's planning application, which makes provision for 400 new homes in Alsager.
- 4.5 In line with the Business Case in the Sports Needs Assessment for DWH's proposed development, the sport and leisure facilities would be managed by ESAR for the length of their operating agreement at no cost to the Council. This will include future capital replacement costs such as surface replacements of the two all weather pitches. ESAR have agreed formally to manage the facilities and accept a lease of the same from the Council for this purpose.
- 4.6 The use of the site and existing facilities required the production of a Sports Needs Assessment to establish what facilities were required to meet Paragraph 74 of the National Policy Planning Framework in order to support the planning application made by DWH. This established that the proposed works will not simply replicate the existing provision. The proposed new facilities relate to laying out of new grass pitches, two artificial pitches (with associated floodlighting and fencing), new changing rooms and parking and enhancing the existing leisure provision, which is adjacent to the site and located at Alsager Leisure Centre and managed by ESAR.
- 4.7 Although the matter is progressing through the planning process, and approval in principle has been given to DWH (subject to entering into a s106 Agreement with CEC) by the Council's Strategic Planning Board, Sport England are concerned about who will operate and manage the new leisure facilities once complete. As identified in the Sports Needs Assessment, such significant facilities require a sustainable level of future management to ensure their success. Sport England therefore require the Council (if we are to take ownership of the new facilities) to ensure that this is in place through CEC's ownership of the land and Sport England have confirmed that they will not lift their objection to DWH's planning application unless CEC accepts ownership of the completed facilities and subsequently arranges the ongoing management of it to their satisfaction.
- 4.8 Whilst Council ownership of the facility was one of several options considered, including ownership locally by sports clubs or via national governing bodies, it was regarded by Sport England as the only sustainable option for the Council to take over ownership of the Property based on the Sports Needs Assessment supplied by DWH. The Sports Needs Assessment was thoroughly checked and challenged by CEC (in conjunction with ESAR) as part of the planning process to ensure it was factually correct.

## **5.0 Background/Chronology**

- 5.1 Planning officers have had detailed discussions with DWH including assessment of their development appraisal which currently includes:
- £4.8m for provision of sports facilities on site for community use
  - A contribution towards the costs of improvements to the local leisure centre
  - A highways contribution
  - Provision of upgraded open space and play equipment
- 5.2 During the planning process it has become clear that the future management of the leisure facilities required as a result of the scheme is an issue that needs to be addressed in order to progress the development of the site as a whole. Sport England have a holding objection to the grant of planning permission for the development of the site by DWH pending a more detailed understanding of the arrangements for the leisure facilities being managed and maintained in the future and will not lift this objection until they are satisfied with the future ownership and management of the leisure facilities provided on site by DWH as part of the scheme.
- 5.3 It has been agreed in principle that the sports facilities will be provided by DWH and then transferred to CEC to be managed by ESAR, which manages all of the Council's leisure facilities. Other solutions for management and running of the new facilities have been considered and discounted. The principal reasons for this are the proximity of ESAR's existing offer and the reluctance of Sport England to withdraw its objection unless CEC is linked directly to the future management and running of the facilities. It would also be very unlikely that a credible local solution to management could be found that would achieve a balance between Sport England's requirements being met and be a viable solution for CEC and residents.
- 5.4 The proposal for the new facilities has two elements, outdoor facilities to be transferred to CEC and improvements to the existing leisure centre in Alsager (leased to and managed by ESAR). The basic approach taken is one of no cost to CEC however, it is clear that in the medium to long term investment may be required to maintain and operate the new facilities. The solution proposed is that ESAR have the ability to offset the expected loss making outdoor facilities if they receive enhancements to their existing indoor offer (at Alsager Leisure Centre), which should lead to an improvement in their income from the site as a whole (both existing indoor and new outdoor facilities). As part of that income generation ESAR will be responsible for setting aside funding for the replacement costs of significant upgrades particularly the playing surfaces of the artificial grass pitches. Should the sinking fund not be used during the term of ESAR's contract and the lease of the new facilities to ESAR then the fund will transfer back to CEC with the asset on expiry of the lease, to be included in the lease/contract to ESAR.
- 5.5 Valuation advice indicates that value of the land asset transferring to the Council is in the region of £350,000.

- 5.6 It is clear through the business modelling that has been undertaken the outdoor provision is not commercially viable by itself, however when included with an enhancement of Alsager Leisure Centre's offer the two provisions together become a viable proposition.

## **6.0 Wards Affected and Local Ward Members**

- 6.1 Alsager Ward - Cllr Martin Deakin, Cllr Rod Fletcher and Cllr Derek Hough.

## **7.0 Implications of Recommendation**

### **7.1 Policy Implications**

- 7.1.1 As a Commissioning Council, the authority continues to look to provide services to residents in the most efficient way possible. It is considered that the proposal to transfer the land to the Council to be managed by ESAR is in line with this approach.
- 7.1.2 The land, facilities and investment works to the existing leisure centre provided by the developer will be subject to the Council's standard transfer and acquisition procedures and in line with corporate asset management plan policies will be transferred to ESAR to manage and maintain as per their contract and lease agreement rationalising the portfolio and reducing the council's direct liabilities, whilst maintaining service delivery.

### **7.2 Legal Implications**

- 7.2.1 CEC is permitted to acquire land pursuant to section 120 of The Local Government Act 1972. The obligation for CEC to take a transfer of the newly built leisure facilities from DWH (or any subsequent owner of the land) will be contained in the s106 agreement between the landowners and CEC. The s106 agreement will also contain obligations in respect of the payment of any sums by the landowner for improvements to the existing Alsager Leisure Centre site, or the requirements for those works to be undertaken.
- 7.2.2 All of the obligations contained within the s106 agreement will not become binding until the planning consent in respect of the site has been implemented by the landowner.
- 7.2.3 By taking a transfer of the Property and associated sports facilities CEC will be acquiring an asset and the decision to do so needs to be supported by a business case. CEC is currently disposing of surplus assets (rather than acquiring further assets and consequently management and maintenance responsibilities) and additionally has contracted with ESAR to deliver leisure services from its current sites in the Borough under a management contract (with associated lease agreements). The decision to take a transfer of Property and then lease

the Property to ESAR needs to be supported by a business case which addresses the above together with viability of the proposal set out in the background information contained in this report (paragraphs 3 and 4).

- 7.2.4 ESAR manages CEC's leisure facilities under an operating contract and associated leases. In considering the option for ESAR to manage the new sporting facilities, the Council needs to consider the operation of The Procurement Regulations and balance the associated risks against the benefits to the community and the residents of Cheshire of this proposal. Given the nature of the facilities and the viability of their operation as set out in the main body of the report the risk of such challenge is considered to be low.
- 7.2.5 If ESAR are to manage the services from and occupy the Property then the current operating contract can be modified by means of the change control process set out in the contract. The delivery of additional leisure services are within the scope of the contract (which satisfies CEC's internal contract procedure rules on modifying contracts CPR 5.1.6)
- 7.2.6 In relation to the new facilities, consideration should be given to aligning the associated lease which will be required with the operating contract and other lease terms. CEC has the power to grant a lease of the new leisure facility to ESAR, for the purpose of management of those facilities, pursuant to section 123 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.
- 7.2.7 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.
- 7.2.8 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.
- 7.2.9 All disposals must also 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, meets the De Minimis rule or falls into one of the permitted exceptions or take a risk based approach balancing the risk of challenge against benefit to the residents of Cheshire.
- 7.2.10 Acquisitions are also subject to similar means of accountability to include best value being obtained. State Aid considerations may need 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 as a result of the transfer of the new facilities being a planning obligation.

### **7.3 Financial Implications**

- 7.3.1 The Council is receiving land assets and new facilities valued at over £4.8m in the provision of new facilities and a further £486,000 investment in the existing facilities at Alsager Leisure Centre. The market value of the transferring land is £350,000.
- 7.3.2 The investment in the existing leisure centre will reduce the maintenance liability in the short term and any increase in long term maintenance liability will be offset by the sinking fund to be created and protected in the legal agreements with ESAR.
- 7.3.3 ESAR will contract and lease the land and facilities and all financial liability for it by back to back simultaneous legal agreements so there will be no direct liability for costs in the interim for CE. It will all be managed via the ESAR contract. In line with the Business Case in the Sports Needs Assessment for DWH's proposed development, the sport and leisure facilities would be managed by ESAR for the length of their operating agreement at no cost to CEC. This will include future capital replacement costs such as surface replacements of the two all weather pitches. ESAR have agreed formally to manage the facilities and accept a lease of the same from CEC for this purpose.

### **7.4 Equality Implications**

- 7.4.1 The new provision on the site will be fully accessible to all residents and a range of programmes and facilities will be developed to attract a wide range of user groups.

### **7.5 Rural Community Implications**

- 7.5.1 The new leisure facility will serve as a sports destination offering a range of accessible facilities not only for Alsager town residents but also the wider rural communities in and around this locality.

### **7.6 Human Resources Implications**

- 6.6.1 There are no implications as all the faculties will be contracted to and managed by ESAR and no staffing implication are attached to this proposed transfer of land or investment in the leisure centre.

## **6.7 Public Health Implications**

- 6.7.1 The new sports hub and leisure centre improvements will be a significant contributor to the Corporate Plan Outcome 5 – People live well and for longer and this will encourage a significant increase in

the number of people undertaking sport and active recreation in Alsager.

## **6.8 Other Implications (Please specify)**

- 6.8.1 The existing lease and contract to ESAR will need to be modified as stated to reflect their acceptance and willingness to take over the transferring facilities and investment and modifications to the leisure centre.

## **8.0 Risk Management**

- 8.1 CEC not accepting a transfer of the sporting facilities to be built as part of DWH's overall development will have a significant impact on the delivery of DWH's scheme and will result in Sport England maintaining their objection to the planning consent being granted.
- 8.2 Should CEC accept the transfer of the leisure facilities it is accepting the liabilities and risks associated with the ownership and management of an asset. In addition CEC would be accepting the risk of the future costs related to the operation of the asset, however the Business Case set out in the Sports Needs Assessment provided by DWH has demonstrated that such future costs can be met by ESAR as part of the income generated for the whole site, including the improved Alsager Leisure Centre facilities.
- 8.3 CEC's service lead for ESAR has considered the attached Business Case which sets out that the asset could be brought in by CEC and be sustainable. This is based on assessment by ESAR, who are positive about the scheme and who indicated their agreement to be involved in the future management and running of the new leisure facilities through a formal decision made by the ESAR Board.
- 8.4 As additional risk mitigation for CEC, it is proposed that management of the new facility would be dealt with as a variation to the existing Operating Agreement with ESAR. To ensure that this process can be facilitated smoothly as part of a back to back transfer to CEC and a subsequent lease to ESAR an officer group of required service representatives has been set up.

## **9.0 Access to Information/Bibliography**

- 9.1 Access to more information is available by contacting the report writer.

## **10.0 Contact Information**

- 10.1 Contact details for this report are as follows:

**Name: Andy Kehoe**  
**Designation: Head of Asset Management**  
**Tel. No.: 07973 892082**  
**Email: andy.kehoe@cheshireeast.gov**