

Cheshire East Council

Portfolio Holder Report – Cabinet Member for Regeneration

Date of Meeting: 13th March 2017

Report of: Executive Director for Place

Subject/Title: Freehold Transfer of allotment sites in Crewe to Crewe Town Council.

Portfolio Holder: Portfolio Holder for Regeneration – Councillor Don Stockton

1. Report Summary

- 1.1. Crewe Town Council was formed in April 2013 as a result of a formal Community Governance Review Process. Under The Local Government (Parishes and Parish Councils) (England) Regulations 2008 (“the Regulations”), the newly formed Town Council has made an application to the Land Registry for the statutory vesting (pursuant to the Regulations) of 11 allotment sites, which fall within its administrative area, with effect from the 1st April 2013.
- 1.2. The Land Registry accepted the application and registered all 11 sites into the freehold ownership of Crewe Town Council. Only 2 of the sites registered were allotment land only, the remaining 9 sites were both allotment and other land and as such did not automatically vest in Crewe Town Council on the date that Crewe Town Council was created.
- 1.3. This report seeks authority to rectify the ownership of the remaining 9 allotment sites back into the freehold ownership of Cheshire East Council (“CEC”) and to immediately thereafter ratify the transfer of the Freehold of the 9 allotment sites (as set out in Appendix 1 to this report). In addition to this the transfers will deal with amendments in terms of agreed sites boundaries, rights of access and other rights and reservations necessary, (as set out in paragraph 2 of Appendix 1 of this report), to Crewe Town Council as part of the Local Service Delivery – Transfer and Devolutions to Town and Parish Councils process.

2. Decision requested

It is recommended that the Portfolio Holder:

- 2.1 Agrees to the rectification of the 9 allotment sites (as set out in paragraph 2 of Appendix 1 to this report) from Crewe Town Council to CEC, which will be formalised by way of a Settlement Agreement and Consent Order made between CEC and Crewe Town Council; and
- 2.2 Provides authority, following the above rectification, to formally transfer the freehold title to the 9 allotments sites (listed in paragraph 2 of Appendix 1 to this report) to Crewe Town Council and to deal with any other legal documentation required to formalise this agreement..

3. Other Options Considered

- 3.1. Not to transfer the freehold of the allotment sites, however, the matter has been subject to legal proceedings which the parties propose to settle in the manner set out in this report.

4. Reasons for Recommendation

- 4.1 Due to an oversight with Crewe Town Council's original Land Registry application, Crewe Town Council is currently named as the registered proprietor of all of the land contained within the title numbers relating to the allotment sites and other adjoining land belonging to CEC, which is not land acquired or used for allotment purposes. The approvals requested in this report are required in order to rectify the current situation to return all of the land to CEC and then effect transfers of part of the allotment land only to Crewe Town Council and for this to be effected by way of a Settlement Agreement and a Consent Order.

- 4.1 CEC and Crewe Town Council have worked together in order to arrive at a Settlement Agreement which meets the requirements of both parties in order to agree the terms of the transfers relating to allotment land site boundaries, rights of access and other rights and reservations necessary in respect of the 9 allotment sites detailed in Appendix 1. Both parties have agreed to bear their own costs in respect of this matter.
- 4.2 The alternative option to resolution by agreement is statutory arbitration pursuant to the Regulations or referral by the Land Registry of this matter to the Property Chamber of the First-tier Tribunal and the resultant formal legal proceedings, which have already been commenced. This would be more expensive and time consuming than resolving the matter by way of agreement and brings with it a degree of uncertainty in so far as how the Tribunal would seek to resolve the transfer of the allotment land (given the complexities of that land forming part only of the registered titles effected and CEC retaining ownership of land within those effected title numbers). Resolution of the current proceedings by agreement is the most expeditious and cost effective option for the Council and the residents of Cheshire East.

5. Background/Chronology

- 5.1. Please refer to the report summary set out at section 1 of this report.

6. Wards Affected and Local Ward Members

Wards Affected:-

Crewe Central
Crewe West
Crewe East
Crewe North
Crewe South
Crewe St Barnabas

Local Ward Members:-

Cllr Irene Faseyi
Cllr Steve Hogben
Cllr Dorothy Flude
Cllr Jill Rhodes
Cllr Brian Roberts
Cllr Suzanne Brookfield
Cllr Clair Chapman
Cllr David Newton
Cllr Damian Bailey
Cllr Mo Grant

7. Implications of Recommendation

7.1. Policy Implications

7.2. None. This is in line with Council policies and decisions.

Legal Implications

- 8.1 The reorganisation order which created Crewe Town Council ("the Order") came into effect on 1st April 2013, the Order was made by virtue of several provisions of the Local Government and Public Involvement in Health Act 2007 and regulations were made pursuant to the provisions of that Act.
- 8.2 The Order creating the Town Council made provision for other matters including transfer of property rights. Included in the Order was a requirement for all of the allotment land to be transferred to Crewe Town Council by way of 150 year leases. Crewe Town Council subsequently objected to the allotment land being leased to them and their position was and remains that the freehold to the allotment land vested in the Town Council on the date that it was created.
- 8.3 The Local Government (Parishes and Parish Councils) (England) Regulations 2008 ("the Regulations") apply to the Order. By r.9 of the 2008 Regulations it is provided that where immediately before the order date (in this case, 1st April 2013) land in an area constituted as a parish by a reorganisation order is held by a principal council for any purpose of the Allotments Acts 1908 to 1950 or is vested in a principal council and used for those purposes, it shall on the order date transfer to and vest in the parish council for that parish or, if there is no such council, the parish meeting for that parish.
- 8.4 The Regulations provide for the vesting of the freehold of the allotment land only to Crewe Town Council and this is contrary to the provisions made for the allotment sites in the Order creating the Town Council.
- 8.5 The Regulations do not make provisions where there is to be a transfer of part of property to effect the freehold transfer (as is the case here for 9 of the allotment sites) and as such these provisions will either need to be agreed between the parties or if not agreed the freehold of the allotment land could vest in the Town Council with no formal rights and reservations being granted or reserved and no such entries being made on the affected titles at the Land Registry.
- 8.6 In addition to the Regulations section 123 of The Local Government Act 1972 authorises CEC to disposal of land subject to any disposal for 7 years or more being at the best consideration that can reasonably be obtained.
- 8.7 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.

8.8 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.

8.9 All disposals must 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, 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 £175,000 (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). State Aid does not apply in this instance because this is a transaction between statutory bodies where there is no distortion of the market or competition.

9.0 Financial Implications

9.1 Rectification of the freehold ownership of the land by way of Settlement Agreement, resolution of the current proceedings by way of a Consent Order between the parties and then transfer of part of the allotment land to the Town Council will carry costs for both parties in terms of legal and surveyor's fees and disbursements. The proposal to seek to rectify the matter by agreement will result in lower costs to both parties than either determination by statutory arbitration or Tribunal hearing. Both parties have agreed to bear their own costs in respect of the Settlement Agreement, Consent Order, rectification of the titles and the transfers.

10 Equality Implications

10.1 It is not considered that the recommendations made in this report have any direct implications on equality and diversity.

11 Rural Community Implications

11.1 It is not considered that the recommendations made in this report have any direct implications on the Rural Community.

12 Human Resources Implications

12.1 It is not considered that the recommendations made in this report have any direct implications on equality and diversity.

13 Public Health Implications

- 13.1 It is not considered that the recommendations made in this report have any direct implications on Public Health.

14 Implications for Children and Young People

- 14.1 It is not considered that the recommendations made in this report have any direct implications for Children and Young People.

15 Other Implications (Please Specify)

- 15.1 None.

16. Risk Management

- 16.1 There is a reputational risk to CEC in not being able to resolve this matter by agreement with Crewe Town Council and there are the associated costs of resolving the matter via either arbitration or litigation.
- 16.2 If the approvals requested in this report and not given then the likely outcome would be that the matter is referred to an Arbitrator to determine the outcome, which could result in significant costs being incurred by CEC if it's position is ultimately not supported by the Arbitrator.

17 Access to Information/Bibliography

- 12.1 Please contact the report writer for any supporting information required.

Contact Information

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