

18 February 2015

Asset and Enterprise Committee

Hutton Community Centre - New Lease

Report of: *Adrian J Tidbury Estates and Valuation Surveyor*

Wards Affected: *Hutton North*

This report is: *Public*

1. Executive Summary

- 1.1 This report considers the response to the expressions of interest received from organisations interested in taking a medium term lease on the Hutton Community Centre.

2. Recommendation(s)

- 2.1 That officers enter into negotiations with those bidders selected by the Committee to seek best value for the Council.**
- 2.2 To report the findings of those negotiations to the next Committee.**

3. Introduction and Background

- 3.1 Members will recall the decision of 5 June 2103 Community Services Committee where members considered a phased approach to the reopening of the Centre. Those phases were:
- Phase 1 - Building repaired/rebuilt (if a cheaper and better option) open and being run by the Council
 - Phase 2 - Development of a community based organisation to run the Centre
 - Phase 3 - Lease of the Centre to an independent organisation

- 3.2 Criteria set out before Members consisted of the following:
- That the primary usage will be a balance between community and sports use
 - That there should also be a balance between fee paying and drop-in use (to be looked at as part of the process of developing the business case)
 - A café will be provided and space will be made available to provide a limited bar facility but the views of the public will be sought on this
 - The Centre needs to be sustainable in each phase
 - Facilities Management arrangements will need to be put in place.
 - That the Council will look after the structure and exterior of the building whilst it is running the Centre.
- 3.3 The 6 November 2013 Performance and Resources Board agreed to accept the tender for the renovation works to the Centre. The Committee requested a detailed budget, to include a summary narrative for approval by the Community Services Committee.
- 3.4 The 26 February 2014 Community Services Committee considered the report concerning the detailed budget and business plan from the Community Group working with the Council. Members reaffirmed that the Community Centre was a community based facility which the Council in partnership with the local community would manage for the first year as part of the phased approach to the community running the Centre independent of the Council. In addition, reassurance was given that Council Members would form part of the management committee supported by officers and that the Council would monitor the Centre's finances closely.
- 3.5 The Committee on 18 November 2014 considered the current use of the Centre and set out the parameters for any future lease on the property which are repeated here for clarity.
- 3.6 In order for the Council to consider best value for the Centre the Council would need to seek bids for the site and for the Council to therefore maximise its income on the asset.
- 3.7 For any lease on the property the Council will need to consider the basis upon which a new lease will be entered into. Any lease greater than 7 years will need to be on a best consideration basis to satisfy section 123 of the Local Government Act 1972 (s123(2)) "Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can be reasonably obtained". A short tenancy is defined in section 123(7) of that Act if it consists "... (a) of the grant of a term not exceeding seven years, or (b) of the assignment of a term which at the date of the assignment has not more than seven years to run..." .

- 3.8 In order to gain best value the Council would need place the property on the market and seek bids from prospective organisations and provide a lease with the person or organisation that provides both the best rental income.
- 3.9 To ensure compliance with the best value requirement any lease on the property should be subject to yearly rent reviews increased utilising the Retail Price Index at the relevant time.
- 3.10 In order to provide a lease of less than best consideration the Council would need to follow the advice given in Circular 06/03 Local Government Act 1972 General Disposal Consent (England) 2003 - disposal of land for less than the best consideration that can be reasonably received. In such cases a valuation of the property by a chartered surveyor will need to be obtained taking into account the requirements of the RICS Appraisal and Valuation Standards (Fifth Edition). Leases in this respect would be seven years or less than 7 years duration.

4. Issue, Options and Analysis of Options

- 4.1 In line with the Committee's instructions, the Council placed a public notice in the Brentwood Weekly News and also wrote to all existing users of the Hutton Community Centre as well as those organisations known to have an interest in the Centre.
- 4.2 The Public Notice was placed in the press during the week beginning 26 January 2015 and direct emails to all users of the centre were sent out on 29 January 2015 as well as known interested parties.
- 4.3 Expressions of interest have been received which are detailed in the Appendices to this report, listed in order of receipt and summarised.
- 4.4 **The Essex Boys and Girls Clubs** is a registered charity and their proposal is a significant departure from the Council's original objective for the Centre as the Club envisage a three year lease at a peppercorn rent and that during the term there be an option to purchase the freehold of the premises for a nominal consideration (£100) upon condition that the proposed development is carried out and completed.
- 4.5 The proposed redevelopment would consist of retaining the existing halls and redeveloping the remaining buildings to provide a dedicated boxing club for under 25's of between 3000 and 4000 square feet of offices, storage and changing rooms, ancillary facilities for the existing halls for a youth club, community club meetings and gatherings, the full detail of the proposal is contained in the Appendices to this report.
- 4.6 In consideration of this proposal, Members will need to consider the Councils wish for a disposal of the property, which has not been

considered in the past and as to how this meets the objects of the original charity that still remain.

- 4.7 Members will need to consider any conflicts of interest that may become apparent between the proposed uses of the premises and how well the different uses will marry together.
- 4.8 Members will be aware of the change in the use of the Centre prior to it being surrendered to the Council in January 2013 and of what avenues would be open to the Council to rectify and return the property to full community use should a similar situation occur again. Should Members agree to any proposed sale, control of the use of the Centre could not be controlled as the property would be in private ownership.
- 4.9 **Purple Puddles Childcare** is a commercial organisation who originally sent in their proposal on 5 February 2015 and revised that proposal by email on 9 February 2015.
- 4.10 Their original offer was to take a rental on the small hall and two other rooms in the premises which does not meet with the terms requested by the Council of securing a lease with a community organisation rather than a rental.
- 4.11 The revised proposal is for a higher bid for all of the premises. This proposal is assumed to still be on a rental basis as they request the retention of the existing centre manager.
- 4.12 **The Hope Community Church** is a registered charity and have declined to provide a rental figure. There was insufficient information provided and the Church would be willing to negotiate a competitive rental once more detailed accounts, usage analysis and information pertaining to any necessary repairs on the building is provided. Members will be aware that the Centre since being brought back into operation has not yet had a full year and therefore this information is not yet available, although budget and income so far received was made available.
- 4.13 Whilst being a religious organisation, they have indicated that they do not intend to try to make the Centre into a church building but rather use their resources and skills to help it become an effective community resource- thus fulfilling the intention of the previous committee decisions of the Council.
- 4.14 In addition the Church have outlined that their hope is that with investment and partnership with other local organisations the Centre can be more than just a space for hire but can become a community hub catering for the needs of the local community. They see a need in Hutton for communal resources to develop social cohesion (e.g. mother and toddler groups, cafes, clubs, etc.) and also for resources to tackle some of the social problems in the area (debt counselling, youth activities, skills

workshops, etc.) The Church intends to see the community centre to be a place where such activities and resources can find a home.

- 4.15 **Building a Better Hutton** have presented their proposal for a 7 year lease but would prefer to secure a longer lease, 25 years, in order that security of tenure can be provided to financial backers, many of which require a longer than 7 year term and who already have agreements in principle in place.
- 4.16 The Group have raised an issue regarding legislation under the Community Right to Buy. However, properties considered under this legislation would need first to be placed on the Register of Assets of Community Value. Should the property be placed on the open market, properties on this register are provided with two moratorium periods enabling time for community groups to raise funds. As the Council has neither placed the property on the register nor proposed to sell the property, this would not apply.
- 4.17 The Group have also asked if the Council would transfer the asset to the Group enabling them to attract funding to undertake further improvements to the property.
- 4.18 The Group has also considered the 'Right to Bid' scheme where they would acquire the property as a community asset on a covenanted purchase basis.
- 4.19 Members will be aware that at the outset of the rejuvenation of the property as a community centre, the Group presented to the 26 February 2014 Community Services Committee a detailed budget and business Plan. It is this business plan that is currently successfully being used to map the direction of the Centre back into community use.
- 4.20 In addition, the Group have indicated their development of the Centre in that the Group believes that it should be a place for cultural, recreational and sporting pastimes. But importantly with the concept of being a hub whereby people can drop in to socialise, individuals can find useful information and meet with their community representatives when the occasion allows. In addition, a community café would be key in both social and income generation.
- 4.21 The Group have indicated that they are made up of local individuals with a collective 200 years' of local knowledge between the Group.
- 4.22 The proposal from the Group provides significant detail of the intentions of the Group towards the Hutton area utilising the community centre and the partners they have started to work with during this first year to the reopening of the Centre.

5. Consultation

- 5.1 No formal consultation has been undertaken specifically regarding the proposed lease. Public engagement has taken place through public meetings during the early stages in the renovation of the project. It was from these public meetings that the working party working alongside the Council in leading the project was brought together.
- 5.2 The Council has placed a public notice regarding its intention to seek expressions of interest and also has written to current users of the Centre along with those groups that it was aware had an interest in the Centre. Members will therefore need to satisfy themselves that the level of circulation is sufficient for the process to be determined or whether to extend the period and seek interest in the site from elsewhere.

6. References to Corporate Plan

- 6.1 Value for Money: policies that invest in key services to create opportunity for all, provide better value for Brentwood's taxpayers and enhance the Borough's infrastructure whilst modernising and transforming Brentwood Borough Council. We will re-prioritise and focus our resources and be innovative in our approach.
- 6.2 Our Borough: Policies which promote our environment, support sustainable growth, and safeguard our high quality environment including heritage and countryside. We will provide responsive, accessible and forward thinking services for vulnerable residents, supporting people back into work and providing good quality housing making Brentwood our residents' Borough of Choice.

7. Implications

Financial Implications

Name & Title: Jo-Anne Ireland, Acting Chief Executive

Tel & Email 01277 312712 / jo-anne.ireland@brentwood.gov.uk

- 7.1 During the presentations, Members will need to take note that the financial implications will vary between the proposals. The current budgeted costs for the first year of operation at HCC are estimated at £35,000. A full financial evaluation of the proposals will form part of the report to this Committee in March.

Legal Implications

Name & Title: Christopher Potter, Monitoring Officer and Head of Support Services

Tel & Email 01277 312860 / christopher.potter@brentwood .gov.uk

- 7.2 The Council is under a fiduciary duty to its council taxpayers.
- 7.3 The Council is required to comply with section 123 of the Local Government Act 1972.
- 7.4 Because of the history of this matter officers have sought advice from the Charity Commission who advised as follows:

“The Charity Commission’s findings

Having undertaken a review of all relevant information, I would summarise the key points in this case as follows:

- the charity leased premises from Brentwood Borough Council (the Council) in 1971 for 60 years
- the charity had been unable to maintain the premises and , over time, the premises lapsed into a state of disrepair and the charity was unable to further its charitable objects effectively
- the charity took the decision to enter into a Deed of Surrender with the Council (signed on 24th January 2013 by Mr Ian Oval an behalf of the charity), which served to surrender its remaining interest in the premises back to the Council.
- the surrender of the remainder of the lease (approximately 18 years) constituted a disposal of charity property
- the disposal may have required the Commission's authorisation (by Order), as you are of the view that the charity did not comply with the provisions of section 119 (1) of the Charities Act 2011
- Mr Oval notified the Council in March 2014 that the association had been disbanded along with any charitable status and our register of charities reflects that the charity had not filed Annual returns/accounts from 2009 onwards, therefore it could be argued that the charity no longer exists
- The Commission is pleased to note that the Council is now taking action to get its premises back on a proper footing and proposes to advertise for expressions of interest from local charities, to reconstitute the premises for the local community

Next steps

- In conclusion, the Commission is content for the Council to take the lead in matters at present and proceed with its proposals as outlined above, without our further involvement.

- We would however appreciate it if you provide us with a progress update in due course, to enable us to establish if we have any regulatory or other role to play at that point”
- Therefore any final choice by the Committee should be expressed as subject to the approval of the Charity Commission if it involves a significant departure from the original charitable objects.”

7.5 Whilst the Committee’s terms of reference on page 32 of the Constitution includes the power of disposal, the Committee cannot make any decision as to disposal without being in possession of all relevant information, including financial information. Moreover, as expressions of interest were invited on a particular basis i.e. as regards a lease, it would be inappropriate for any decision to be taken at the present time on a freehold disposition whether or not “expressed as subject to the approval of the Charity Commission”.

8. Background Papers (include their location and identify whether any are exempt or protected by copyright)

All Committee papers relating to Hutton Community Centre are available on the Council’s website.

9. Appendices to this report

Appendix A Expressions of interest received (Exempt)

Appendix B Summary of the expressions of interest received (Exempt)

Report Author Contact Details:

Name: Adrian J Tidbury

Telephone: 01277 312678

E-mail: adrian.tidbury@brentwood.gov.uk