

**Report to:** Cabinet

**Date:** 5<sup>th</sup> June 2019

**Title:** Enabling Community Assets – Royal Hippodrome Theatre & Langney Playing Fields

**Report of:** Ian Fitzpatrick, Director of Regeneration & Planning

**Cabinet member:** Councillor Alan Shuttleworth

**Ward(s):** All

**Purpose of report:** The report seeks a decision about the future of two community assets in Eastbourne namely The Royal Hippodrome Theatre and Langney Playing Fields. It also sets out the rationale for developing a Community Assets Policy for the Council.

**Decision type:** Key Decision

**Officer recommendation(s):**

(1) For Cabinet to agree in principle to disposal of the freehold of the Royal Hippodrome Theatre to The Royal Hippodrome Theatre Eastbourne CIC (company number 09353373) and in principle to the disposal of Langney Playing Fields to Acorns Charitable Trust.

(2) To delegate authority to the Director of Regeneration and Planning in Consultation with the Chief Finance Officer in consultation with the Portfolio Holder for Community to agree the final disposal terms subject to:

- (i) a red book valuation undertaken by a RICS qualified Person for both assets and
- (ii) further legal due diligence and exploration of the potential for including restrictive covenants controlling the future use of the properties and overage clauses enabling the Council to share in any future increase in value in the properties realised after the properties have been sold.

The scope of the delegation to the Director to include the potential for disposal at an under value in accordance with circular 06 of 2003 where it is considered that this will help to secure the promotion or improvement of the economic, social or environmental well-being of the Council's area.

(3) To authorise the Director of Regeneration and Planning in Consultation with the Portfolio Holder and Chief Finance Officer to undertake all actions required to complete the

**disposal of the properties above including authorising completion of legal documentation.**

**(4) To note that a further report will be submitted to Cabinet in the Autumn of 2019 setting out the Council's approach and policy towards community assets.**

**Reasons for recommendations:** To provide community organisations the ability to manage their own estate therefore enhancing the opportunity for them to achieve inward investment and development whilst relieving pressure on the Council's limited resource.

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## **1 Introduction**

- 1.1 The Council set out its approach to community assets as part of its Corporate Asset Management Plan which was adopted by Cabinet in 2017. The plan sets out the Council's approach to all assets and estate in the Council's ownership such as the process of 'asset challenge' and the remit and scope of the Strategic Property Board (SPB). This report outlines the first phase of how the 'asset challenge' process will approach community assets whilst meeting the ambitions of two community groups in Eastbourne.
- 1.2 Whilst the Council wishes to ensure that it is protecting the heritage of the town, it is also highly supportive of enabling others embedded within the community to have control and the ability to develop their own business plans and attract inward investment.
- 1.3 In a challenging financial context community groups have to be flexible and fast to react and engage with funding opportunities. This is often far simpler for them when ownership of the assets sits within their own governance. The Council would like to ensure they are taking all reasonable steps to achieve this, and to this end, the disposal is recommended of The Royal Hippodrome Theatre and Langney Playing Fields to two well regarded, long running and well established community groups.
- 1.4 In addition, the financial background to this proposal is that the Royal Hippodrome Theatre in particular needs significant investment which represents an unbudgeted liability for the Council. In a scenario where others can invest when the Council does not have the funds, enabling them to do so is a positive approach.

## **2 Proposal Royal Hippodrome Theatre**

- 2.1 The Royal Hippodrome Theatre (RHT) opened in 1883 as the New Theatre Royal and Opera House and was bought by the Council in the late 1950s/early 1960s. The building is Grade II and Locally Listed.
- 2.2 At its meeting on 18 October 2017, Cabinet were made aware of the poor condition of the property and discussed future operational arrangements. Cabinet was informed that a local community group had expressed a desire to take over the running of the property and agreed at that time Officers should pursue the granting of a long lease on the property to the group on a fully repairing lease. This decision was made on the basis that the Council would remove its existing and future liabilities for the property and secure the future of RHT for the community. In February 2018 members of the group became directors of The Royal Hippodrome Theatre CIC (RHTECIC). The CIC are in occupation of the property on the basis of an existing licence under which it receives a grant of £35,000 per annum.
- 2.3 Further investigative work has been undertaken on the condition of the property since the Cabinet decision and it is estimated works to the exterior and interior of the property are likely to be significant life cycle asset costs. Officers have been unable to further lease discussions due to new approach to community assets considered. However, it has been established that under a lease scenario, the CIC would not be prepared to accept a fully repairing lease in the current circumstances and would require continuation of the existing grant made by the Council to continue for at least five years. As such the Council would wish to formulate a mechanism to facilitate the continued use of the site as a theatre and at the same time agree a one off contribution towards the repairs required. The CIC remain committed to investments in the region of £500,000 in the property alongside any capital contribution from the Council.
- 2.4 Whilst discussions have ensued, RHTECIC has continued to invest in the theatre and has recently undertaken improvement works to the foyer – around £250,000 has already been invested. The CIC has proved its commitment to the property and has exciting plans for its future as a community theatre, however, a way forward needs to be found in order to allow the CIC to continue with its plans. To this end, officers have opened discussions with the CIC regarding a possible ‘as seen’ freehold disposal. RHTECIC have said that they would be prepared to accept this on the basis of the Council paying a one off contribution to future capital works.
- 2.5 An independent freehold valuation of the property will be taken on behalf of the Council, and a process of further due diligence will also be undertaken before the disposal is finalised, including seeking specialist advice about protecting the future use of the building. This would include ensuring covenants are in place to protect the asset for community value.

### **3 Proposal Langney Playing Fields**

- 3.1 Langney Sports Club is in occupation of Langney Playing Fields. The Club is wholly owned by Eastbourne Borough Football Club CIC and includes Eastbourne Borough Football Club, Langney Sports Indoor Bowls Club, Eastbourne Archers, Owlets Nursery and two bars. Occupation is under the terms of a 99 year lease dated 4<sup>th</sup> November 1992 to the Acorns Charitable Trust (ACT) incorporating and formerly known as Langney Playing Fields Committee). The Charity owns 52.5% of EBFC CIC.
- 3.2 Rental for the site is currently £12,000 p.a, however, the charity receives Rent Support Grant of £7,000 meaning the Council receives a net rental of £5000.
- 3.3 ACT have approached the Council wishing to purchase Langney Playing Fields "...to provide stability and reassurance for those that use the facilities on the land into the future". ACT has stated that it wishes to continue to provide diverse and accessible facilities for the community of Langney and beyond. If successful in their purchase, ACT would register the site with Fields In Trust.
- 3.4 A valuation will be undertaken on the basis of current and continuing use. ACT have made an offer on the site which can only be agreed once the valuation and due diligence of progressing the disposal has been completed.

### **4 Future Policy of Community Asset Disposal Consultation**

- 4.1 Both options to dispose above are on the basis of two key drivers;
- The Council has limited capital available to ensure the future stability of the community assets whereas in both areas there are organisations willing and capable of providing additional investment.
  - The community organisations and entities wanting to take on these community assets will be in a better position to attract external funding.
- 4.2 It is proposed that a paper come back to Cabinet in the Summer of 2019 which will outline the policy and Councils approach to all further decisions about community assets as it progresses the Asset Challenge process set out in its Asset Management Plan adopted in 2017.

### **5 Corporate plan and council policies**

- 5.1 As stated above the recommendations of this report are aligned to the Asset Management Plan adopted by the Council in 2016. The principles of that plan are also documented in the Council Plan.

### **6 Business case and alternative option(s) considered**

- 6.1 It is thought that enabling the community to manage assets directly is the best option to ensure the future sustainability of the Royal Hippodrome Theatre and Langney Playing Fields. The Council has made direct investment into sustaining theatres in the town such as the Congress at Devonshire Park which has now

been completed.

## **7 Financial appraisal**

- 7.1 The disposal of both of these properties has the potential to generate capital receipts to the Council, which can be retained or utilised to finance the Council's Capital Programme. The RHT requires significant investment which represents an unbudgeted liability for the Council, and disposal should assist in enabling external funding to be secured to meet these liabilities. However, it should be noted that, as referred to in paragraph 2.4, a contribution to future capital works may need to be considered as part of the negotiation of the freehold disposal of the RHT. As outlined in the report, both disposals will be subject to valuation and further due diligence.

## **8 Legal implications**

### **8.1 Best consideration and advertising disposal – section 123 Local Government Act 1972**

S123 provides a power to dispose of land (except housing land and land held under the Planning acts) subject to restrictions. These are as follows:

- Consideration for the disposal must not be less than the best that can reasonably be obtained in the market, except with the express consent of the Secretary of State. A general consent has been issued by the Secretary of State (circular 06 of 2003), which permits disposals to be made at an under value where a council considers that will help to secure the promotion or improvement of the economic, social or environmental well-being of its area and the aggregate undervalue does not exceed £2 million.
- There are further procedural requirements to be complied with on a disposal of open space land. A local authority is required to advertise its "intention" in a local newspaper for two consecutive weeks and to consider objections. The advertising process should be should be done before any final decision is taken on the disposal, so that proper consideration is given to the responses that are received.

### **State aid**

In disposing of any land or interest in land the Council must ensure that it does so in accordance with State aid rules. There is an automatic assumption that no State aid is present in a sale for "market value" through (i) an open and unconditional bidding process or (ii) an expert valuation. If the automatic assumption does not apply it will be necessary to look at other aspects of the proposal, including whether the disposal falls outside of the State aid regime because it does not fulfil all of the State aid tests.

## Contract Procedure Rules – disposal of land

Subject to certain exceptions, the Council's CPRs say that no freehold sale of land where the value exceeds £50,000 shall be made except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

## Restrictive covenants and overage

Consideration should be given to the following:

- Imposing restrictive covenants in the freehold transfers limiting the future use of the properties.
- Including overage clauses in the freehold transfers enabling the Council to share in any future increase in value in the properties realised after the properties have been sold. This will enable the Council to share in any uplift in value if planning permission is granted to develop the properties for something much more valuable, e.g. residential use. A restrictive covenant does not provide adequate protection and also leaves open the amount payable by way of damages in the event of a breach. The precise terms of the overage, including the percentage share and duration of the overage rights, would have to be settled after taking professional advice.

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## **9 Risk management implications**

- 9.1 Any decisions to proceed with the disposal of Council assets is subject to the further due diligence as set out in the recommendations of this report.

## **10 Equality analysis**

- 10.1 No relevance.

## **11 Appendices**

None.

## **12 Background papers**

None