

TITLE OF REPORT: COMMUNITY CENTRE LEASES

REPORT OF THE STRATEGIC DIRECTOR OF FINANCE, POLICY AND GOVERNANCE
EXECUTIVE MEMBERS: COUNCILLORS T.W. HONE AND TONY HUNTER

1. SUMMARY

- 1.1 Negotiations on the leases for St Michaels Mount Community Centre (Hitchin) and Coombes Community Centre (Royston) have continued since Cabinet agreed an extension on the deadline to 30 November 2016. The aim of the negotiations has been to agree a lease fully in line with the Community Halls strategy.
- 1.2 It has not been possible to agree a lease with either Community Centre that is fully in line with the Community Halls strategy. The recommendations reflect this position.
- 1.3 Negotiations in relation to the Walsworth Community Centre have also continued. Given the longer deadline for these negotiations (end of January), no recommendations are made in respect of this Community Centre.

2. RECOMMENDATIONS**Coombes Community Centre**

- 2.1 That Cabinet confirm that the lease terms must include free use of the Community Centre by the Council for reasonable election use.
- 2.2 Subject to the Community Association agreeing a lease in accordance with the Community Halls strategy (including free use for elections) by 20 January 2017, that Cabinet confirm the use of the allocated capital funding for the three priority areas of work. The estimated cost of these is £100k.
- 2.3 If the Community Association does not agree a lease in accordance with the Community Halls strategy (including free use for elections) within the timeframe above, that Cabinet authorise officers to investigate alternative management arrangements for the Community Centre. This would be to identify any organisations that would take on the Centre under a lease fully in line with the Community Halls strategy. This would include continuing a community use for the Centre.

St Michaels Mount Community Centre

- 2.4 If the Community Association feel that by making a bid to the 'Community Facilities Capital Projects Fund' they can agree a lease in accordance with the Community Halls strategy. That Cabinet agree to more time for the bid to be submitted and considered. The Community Association would need to confirm they were making a bid by 20 January 2017 and then submit this by 17 February 2017.

- 2.5 If the Community Association remain unable to commit to a lease in accordance with the Community Halls strategy within the timeframes above. That Cabinet authorise officers to investigate alternative management arrangements for the Community Centre. This would be to identify any organisations that would take on the Centre under a lease fully in line with the Community Halls strategy. This would include continuing a community use for the Centre.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Lease negotiations have been conducted in accordance with the District Council's adopted Community Halls Strategy. That strategy recognised that with the increasing pressures on Council finances, the ability of the Council to continue to be responsible for all repairs and maintenance for Community Centres was unsustainable. In an effort to support the on-going provision of Community centres, the Council sought to negotiate new leases to make the Community Centres responsible for repairs, maintenance and insurance and deliver value for money to the local Council tax-payer.
- 3.2 The outcomes of negotiations have varied between Community Centres. Some Centres are more able to accept new lease terms than others. Whilst it is appreciated that each Centre is different (e.g. in terms of building condition and usage), where possible the Community Halls strategy should be applied consistently.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Authority to agree lease terms that broadly comply with the Community Hall Strategy have been delegated to the Strategic Director of Finance, Policy and Governance in consultation with the Executive Members for Finance & IT and Community Engagement & Rural Affairs.
- 4.2 It would be possible to offer lease terms that only partially met the Community Hall Strategy. This is likely to mean that the future costs incurred by the Council would be higher. It could also be seen as being unfair on those groups that have signed up to leases that do comply with the Community Halls strategy.
- 4.3 It is likely that there would be organisations that would lease the buildings on a commercial basis. This would involve paying a market rent (rather than a nominal or pepper-corn rent) under a lease that was fully repairing and insuring. This would generate additional income to the Council but would not guarantee community use. From experience, the greatest interest is likely to be for use as child-care provision. Whilst this would be commercial enterprise, it could in itself have community value and it may be possible to agree a lease clause that maintained some community use outside the period that it was being used for child-care provision.
- 4.4 Another alternative option would be to close the Community Centre. This would reduce the ongoing running costs incurred by the Council in relation to compliance contract monitoring and works. It would also avoid the requirement for capital works at this time. It would also allow for alternative uses for the building and/or land to be considered.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 The Community Halls Strategy was adopted by Cabinet on 27 September 2011. This followed consultation on the Strategy with numerous parties, including District Council Members, Community Centre Managers and the general public.

5.2 Local Ward members were also contacted to seek any initial general views they may have with regard to those community centres where lease negotiations are ongoing.

6. FORWARD PLAN

6.1 This Report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 1 August 2014.

7. BACKGROUND

7.1 The purpose of the Community Hall Strategy was to define North Hertfordshire District Council's role in the operation of existing community halls, provide a strategy for supporting those facilities in a sustainable way, and advise on the construction and operational management of new builds in accordance with anticipated housing and infrastructure developments up to 2031. The strategy includes that "*When community centre leases come up for renewal the Council will seek opportunities to agree a renewal on a repairs basis that is appropriate for the operation of the facility and provides value for money to the local taxpayer*".

7.2 An update on lease negotiations was provided to Cabinet at its meeting on 30 March 2016. This detailed that for three community centres, various discussions had failed to provide proposals in regard to their preferred lease term or sliding scale of payments, moving towards a repairs lease agreed by Cabinet. These community centres were Walsworth Community Centre and St Michaels Mount Community Centres, Hitchin and Coombes Community Centre, Royston. Three other Community Centres (Jackmans, Grange and Westmill) have agreed to full repairing and insuring leases, that include free election usage.

7.3 Cabinet resolved that:

- Ways should be sought of enabling investment in necessary works... to ensure facilities are in a reasonable standard of repair for lease negotiations to progress
- Throughout lease discussions, officers [should...] ensure that the social and community benefits afforded by community centres are evaluated alongside any benefit derived from securing a full repairing or alternative lease arrangement
- Authority to agree the precise terms of any leases to be taken forward be delegated to the Strategic Director of Finance, Policy and Governance in consultation with the Executive Members for Finance & IT and Community Engagement & Rural Affairs, and that these Members, together with appropriate officers, continue with discussions with the Community Centre organisations with a view to offering them a package for the new leases which broadly complies with the existing policy on Community Halls and which can be agreed by both parties
- The deadline for the conclusion of the discussions/negotiations referred... above be fixed as August 2016, and if no agreement between the parties is reached by then, the matter be reported back to Cabinet.

7.4 A subsequent report was provided to Cabinet at its meeting on 27 September 2016. This agreed more time for the lease negotiations i.e.:

- Until 30 November 2016 for St Michaels Mount Community Centre and Coombes Community Centre
- Until 31 January 2017 for Walsworth Community Centre.

8. ISSUES

8.1 Coombes Community Centre, Royston

- 8.1.1 The report to Cabinet in September detailed that there was one remaining point to be agreed. This related to the Community Association seeking reimbursement from the Council for election use. The number of rooms required for election use has been reviewed and can be significantly reduced. It has also been proposed that the free use would be subject to a limited number of occasions and reasonable notice would be provided. However the Community Association are still seeking this reimbursement.
- 8.1.2 The cost to the Council of removing this clause would be low. The Community Association have agreed to make the Centre available for election use and to charge a rental fee that only reflected their costs. However, three other Community Centres (Jackmans, Grange and Westmill) have agreed to the inclusion of free election usage within their leases. Coombes Community Centre is generally in good condition (subject to capital works detailed below) and has good potential to generate income. It is therefore considered reasonable to treat them in the same way as the three Community Centres listed above, and require a lease term in respect of free election usage.
- 8.1.3 The Community Association have previously highlighted that they feel charity law does not allow them to grant free usage. Whilst Officers do not consider this is the case for the minimal usage that the Council requires, the rent could be increased by an equivalent amount to the expected rental fees. This would then allow the rental fee to still be charged, which would then mean no additional cost to the Council and be equitable with the other Centres referenced above.
- 8.1.4 As highlighted in the report to Cabinet in September, the Community Association were also requesting that the Council provided capital works in three priority areas i.e. new car park surface, new windows and a new floor in the Sports Hall. The cost of these is estimated to be around £100k. There is financial provision within the current capital programme for these works. The works could be contracted by either the Council or the Community Association.

8.2 St Michaels Mount Community Centre, Hitchin

- 8.2.1 Constructive discussions have continued with the Community Association. They have commissioned their own building survey to help them fully understand what they would be taking on. They are willing to continue to fund the cost of internal repairs and maintenance. They also propose to use some of their accrued balances for a range of works including new windows. However they do not feel able to take on responsibility for all exterior repairs and maintenance, particularly in relation to sewerage, the car park, retaining walls and grounds maintenance. They have said that they would make a contribution where they feel able to, and would take on the compliance contract works. The compliance contract was assumed to be funded by the Council under the new lease, so this element is a saving to the Council (of around £3k per year). They also do not feel able to commit to taking on the full building insurance costs for the Community Centre, rather contributing an affordable amount.
- 8.2.2 The overall balance is that the Council would continue to have significant ongoing costs, both for revenue and capital items. The intention of the Community Halls strategy is to make the provision of the Halls sustainable for the Council, which this does not achieve.

- 8.2.3 The Community Association have been asked if the provision of capital funding by the Council (e.g. through the 'Community Facilities Capital Projects Fund') would allow them to take on a full repairing lease. This is on the assumption that the capital funding would put the Community Centre in an improved condition and reduce ongoing costs, as well as freeing up accrued balances that they had planned to spend. The Community Association have not yet provided a response.
- 8.2.4 The draft lease discussed with the Community Association permits up to 50% of the building's floor area to be used for commercial use, subject to Landlord consent and any applicable planning permission. The Community Association have stated that as a Charity they are unable to sub-let to commercial businesses. Officers are not aware of any blanket restriction of this nature and note that the Charity Commission provides advice on how such an activity may be lawfully undertaken in circumstances where it constitutes trading. In adopting this view, it does limit the Association's ability to subsidise community use and still generate funds for external repairs and maintenance.
- 8.2.5 Officers are aware of two other organisations that might be willing to take on a full repairing and insuring lease on the Community Centre, and continue to make it available for community use. A lease contract with such an organisation could include requirements in respect of community use. In terms of maintaining the community use of the Centre, this would be preferable to the alternatives (i.e. closure or full commercial lease)

8.3 Walsworth Community Centre, Hitchin

- 8.3.1 Officers have had a further meeting with the Community Association, and further information was provided (e.g. draft lease terms). The availability of the 'Community Facilities Capital Projects Fund' was also discussed. The Community Association are now considering whether they could agree to a lease in line with the Community Halls strategy.
- 8.3.2 Walsworth Community Centre has been registered as an Asset of Community Value.

9. LEGAL IMPLICATIONS

- 9.1 Cabinet has within its terms of reference at paragraph 5.6.1 of the Constitution to prepare and agree to implement policies and strategies other than those reserved to Council. This report relates to the implementation of a Council strategy, namely the Community Halls Strategy.
- 9.2 The powers relevant to the options set out in this report are:
- (i) Under S19(1) of the Local Government (Miscellaneous Provisions) Act 1976 a local authority may provide such recreational facilities as it thinks fit and specifically under S19(1)(d) of the same act, premises for the use of clubs or societies having athletic, social or recreational objects.
 - (ii) Section 123 of the Local Government Act 1972 permits a local authority to dispose of land held by them in any manner they wish provided that a local authority may not dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained unless the local authority has the prior consent of the Secretary of State. A short tenancy is a tenancy of less than seven years.

A general consent has been issued which permits a disposal at less than best consideration subject to the condition that the undervalue does not exceed £2,000,000 and that the disposal is likely to achieve any one or more of the following objects:

- the promotion or improvement of economic well-being;
- the promotion or improvement of social well-being;
- the promotion or improvement of environmental well-being.

(iii) S1 of the Localism Act 2011 provides a general power of competence and gives local authorities the power to do anything that individuals generally may do provided that it is not prevented from doing so by any pre-existing legislative provision.

9.3 The District Council served notices, in accordance with the Landlord and Tenant Act 1954, on the community groups discussed in the report terminating their leases with the offer of new leases where the groups were to be responsible for repairs and so on. The 1954 Act sets out time limits which allow the parties to negotiate the new lease. The groups failed to apply to the Court within the time limits and as a result they have lost the right to a new lease on this basis.

9.4 The occupation by the tenants of St Michaels Mount Community Centre, Walsworth Community Centre and Coombes Community Centre is currently formalised by a Tenancy at Will. Tenancies at Will can be terminated at any time, on a minimum of four weeks notice, by either the District Council, as landlord, or by the tenant.

9.5 By signing a Tenancy at Will the occupation of St Michaels Mount, Walsworth and Coombes Community Centres is regulated so that both parties (landlord and tenant) know their respective responsibilities and what to expect from each other whilst lease negotiations take place. The tenants in these three community centres no longer benefit from security of tenure under the Landlord and Tenant Act 1954, Part II. The District Council therefore has sufficient legal flexibility to pursue and implement the option of leasing to alternative tenants, once any notices to quit are served on the existing occupiers and the occupiers have vacated the properties.

10. FINANCIAL IMPLICATIONS

10.1 The Council has already borne the additional cost of third party independent specialist advice and support provided to each centre via the Community Development Agency for Hertfordshire. It has also borne the cost of a condition survey for Walsworth Community Centre.

10.2 There are sums allocated (£300k per year) within the capital programme for council property improvements following condition surveys. There is also a £1m (over 4 years) capital budget allocated for the refurbishment and improvement of community facilities (i.e. the 'Community Facilities Capital Projects Fund').

10.3 Each Community Centre requires considerable investment, and therefore the Council is seeking arrangements by which its future liabilities are reduced and managed. This is in the context of needing to reduce ongoing expenditure by at least £2.75 million within the next four years.

11. RISK IMPLICATIONS

- 11.1 The risks relating to the renewal of lease agreements has been included on Covalent, the District Council's Performance and Risk software. The risk is described as "there is a risk that the Council will fail to agree a lease renewal or reach an agreement with the community centres. This would mean that Council Tax payers would continue to subsidise the operation of the facility and this would not be in line with the Council's agreed strategy".

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1 October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5 April 2011. There is a General duty, described in paragraph 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 Whilst the impact of whichever option or options Cabinet advise officers to progress will be subject to further review, it is important to consider that the provision of community centres remains a service which the Council has discretion to provide, or may provide through alternate means including through community management arrangements or community transfer. These should be seen in an enabling capacity, and afford the local communities in each location an opportunity to take on and run a facility as they see best, provided of course they meet the terms of any lease agreed. In assessing capacity and availability of premises, it should also be borne in mind that the Council is far from the only provider of community facilities; there are at least 47 managed halls, village halls and community centres in the district. This is alongside other tertiary facilities that provide community services such as church halls and schools. Indications are that they still retain sufficient capacity to meet community demands.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Public Services (Social Value) Act was passed at the end of February 2012. Under the Act, public bodies in England and Wales are required to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area.
- 13.2 As the recommendations made in this Report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraph 14.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no direct Human Resource implications to this Report apart from consideration of the constraints of officer time since the lease negotiations thus far.

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16. BACKGROUND PAPERS

- 16.1 Cabinet report dated 30.03.2016.
16.2 Cabinet report dated 27.09.2016.