

**OVERVIEW AND SCRUTINY COMMITTEE
3 DECEMBER 2013**

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

11

TITLE OF REPORT: SUPPORT FOR COMMUNITY GROUPS DURING LEASE RENEWALS

REPORT OF THE CORPORATE LEGAL MANAGER

PORTFOLIO HOLDER : COUNCILLOR LYNDA NEEDHAM

1. SUMMARY

- 1.1 The purpose of this report is to advise members of the Overview and Scrutiny Committee on work with community groups during lease renewals.

2. RECOMMENDATIONS

- 2.1 That the Overview and Scrutiny Committee notes the contents of this report.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that members of the Overview and Scrutiny Committee have received the requested information.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 Not applicable.

6. FORWARD PLAN

- 6.1 Not applicable.

7. BACKGROUND

- 7.1 At its meeting of 17th September 2013 the Overview and Scrutiny Committee resolved in relation to the agenda item on The Effectiveness of the Implementation of the Community Halls Strategy and the effect of implementation on Community Groups:

RESOLVED:

- (2) *That the Corporate Legal Manager be requested to investigate whether it would be possible for the NHDC Legal Department to provide legal advice to Community Centres regarding lease renewals and report her findings to the next meeting of this Committee due to be held on 3 December 2013.*

REASON FOR DECISION: To enable the Overview and Scrutiny Committee to review progress on implementation of the objectives and policies as set out in the Community Halls Strategy.

- 7.2 This report is intended to provide the requested feed back to Members.
- 7.3 The Community Halls Strategy was agreed by Cabinet on 29th September 2012 and was called in by Overview and Scrutiny Committee on 6th October 2012. The general principles of the strategy were upheld, the only recommendation made to and adopted by Cabinet at its November 2012 meeting, being to provide the assurance that Bancroft Hall would not close until such time as Hitchin Town Hall re-opened.
- The Community Halls Strategy was further considered as part of the Task and Finish Group's report on the Council's Grants Process and Related Community Benefits, endorsed by Cabinet on 30th July 2013. As part of that Task and Finish Group, there was general support for the principle established in the Community Halls Strategy that community groups should pay towards the cost of running and repairing facilities taking individual circumstances into account. It was recognised by the Task and Finish Group that with regards to lease renewal negotiations for the community centres, setting the terms of a new lease was not purely a financial exercise, but also took into account other factors including what the community or voluntary group needed and what they could afford. When setting revised rents the Task and Finish Group, whilst noting that it might be feasible for some groups which generated income from their facilities to pay more in rent or to take on a full repair lease, agreed that in general the possibility of reducing the council's liabilities was more realistic than raising rents in the majority of cases. That said, leasing arrangements at peppercorn rents which required the council to repair and maintain the building was both a notional loss of income and an actual cost to the council's budget. The Task and Finish Group considered that such assistance should be quantified and taken into account as appropriate as referred to in paragraph 8.2.17:
"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".
 - In the report on the Medium Term Financial Strategy 2014 - 2019 adopted by Cabinet on 30th July 2013 and endorsed by Full Council on 5th September 2013, it was stated (at paragraph 6.8) that "the Council will seek to manage all its assets cost-effectively and also to encourage community lessees to move towards running assets on a self-sustaining financial basis to reduce/remove the financial impacts on the wider taxpayer". This will help to bring them inline with the other community properties in the area, the majority of which are not owned by the District Council and have not received the benefit of some of the maintenance and repairs being funded by the District Council.

- 7.4 The Report to Overview and Scrutiny on 17 September 2013 reported on the progress of six community hall leases, namely:
- Jackmans Community Centre
 - Coombes Community Centre
 - St Michaels Community Centre
 - Grange Community Centre
 - Walsworth Community Centre
 - Mrs Howard Memorial Hall
- 7.5 This Report considers the:
- Legislative and Practical framework within which Leases are negotiated
 - Ways NHDC supports Community Groups currently
 - Previous experience of the Council adopting a chinese wall approach in practice
 - Issues to consider
 - Ways community groups can access lower cost professional advice

8 ISSUES

8.1 The legislative and practical framework within which Leases are negotiated

- 8.1.1 The process for renewing a lease usually begins with the Council as Landlord serving a formal notice on the tenant to renew the lease (a Section 25 Notice). The two parties then enter into negotiations about the terms of a new lease. General principles regarding Land Transactions are outlined in Part I of the Council's Contract Procurement Rules. Once terms are agreed Property Services produce heads of terms based upon the Council's adopted Community Hall's Strategy and the agreement reached between the parties. Legal Services then produces a draft lease. An initial assessment is also undertaken of the financial position of the tenant, which can be via analysis of financial returns submitted to the Charities Commission (if the tenant is a registered Charity), financial information provided directly by the lessee, or both.
- 8.1.2 When a lease renewal is being negotiated, it is also necessary to consider the additional rights that the tenant may have in respect of the grant of the new lease. The Landlord and Tenant Act 1954 as amended ('the LTA 1954') creates a legislative framework that applies when negotiating lease renewals for certain tenants. The starting point for all six of the community hall lease renewals is that they have the right to be negotiated within this framework. Broadly the LTA 1954 provides:
- The existing lease will continue even after the contractual end date until it is terminated by service of a statutory notice by the Landlord or Tenant.
 - If the statutory notice proposes a new lease, it must confirm the proposed terms. It must also specify the start date for the new lease, which must be between 6 and 12 months from the date of the notice.
 - The Landlord and Tenant can agree terms for a new lease at any time before the start date specified in the notice. The parties can agree whatever terms they choose and need not restrict themselves to the terms envisaged by the legislative framework.
 - If the parties cannot agree terms then either the Landlord or the Tenant can apply to the county court to determine the terms of the lease. In these circumstances the court can only grant terms in accordance with the legislative framework of the LTA 1954 and subsequent case law. The overarching principles that the court will apply are:

- i) The property comprised in the new lease shall be the same as in the existing lease.
- ii) The term of the new lease shall not exceed fifteen years.
- iii) The rent payable shall be the rent that the property might reasonably be expected to be let in the open market (subject to various assumptions set out in the LTA 1954)
- iv) In determining all other terms of the lease the court shall have regard to the terms of the current tenancy and all other relevant circumstances. Case law has confirmed that in practice this means the court will grant the lease on substantially the same terms as the existing lease subject to reasonable updating.

8.1.3 In respect of five of the six community hall lease renewals, NHDC has served formal notices on the Community Groups “the Groups”, as tenants proposing new lease terms. A notice has not been served on one of the Groups as the Council is working to resolve a discrepancy in the registered title for the land and it is not appropriate to serve a statutory notice until this is resolved. Where notices have been served, the terms proposed took account of the recommendations of the Community Halls Strategy including proposed rent reviews, payment of all outgoing including business rates, and the Tenant becoming responsible for the cost of building insurance and external repairs.

8.1.4 The reaction of the Groups to the proposed terms has inevitably varied from group to group. In some instances Groups have not been willing to engage in as meaningful a dialogue. However predominantly the Groups have opposed those terms that place a greater financial burden on themselves as tenant, such as paying rent and taking on a full repairing obligation, or movement towards such obligations. It is not the experience of officers that the Groups are concerned with issues of detail or matters that would be influenced by the nuance of legal drafting. The areas of dispute are primarily focused on fundamental heads of terms such as who will bear the costs of repair and the length of lease required; in essence issues that are straightforward to understand but sometimes difficult to agree. Groups have often requested an early copy of the draft lease even where heads of terms have not been settled.

8.1.5 In circumstances where terms cannot be agreed between the Council and the Group, Property Services have been unable to present agreed Heads of Terms to Legal Services to enable a draft lease to be prepared. This creates a situation where if the Council wishes to issue a draft lease in an attempt to break the impasse, then the only option is for the Council to prepare a document on terms that it is aware have not been agreed.

8.1.6 During the lease renewal process officers are mindful that the Groups are generally comprised of volunteers and do not have a professional management team and that the primary objective for both the Council and the Group is to reach agreement on the terms of a new lease. Officers work to achieve that aim by supporting Groups through the process in a number of ways:

8.1.6.1 Engaged negotiations and face to face meetings

Whilst the LTA 1954 only requires service of a formal notice to begin the lease renewal procedure, officers take the view that in the case of community groups it is helpful for the notice to be accompanied by a letter explaining how the proposed terms had been reached. In relation to the community centre lease renewals, the covering letter specifically referenced the community halls strategy and invited the community groups to contact Property Services to discuss lease matters further. Groups were also offered the opportunity to discuss wider community aspects, including exploration of income generation potential, with the Community Facilities Manager.

8.1.6.2 Community Facilities Manager support

In the case of one of the Groups, it became apparent that whilst they were willing to engage with the lease renewal process, they faced certain challenges in respect of their future plans for the property. The Group wished to make alterations to the property that required formal plans and work schedules to be submitted to the Landlord. It was identified by the Officers dealing with the lease renewal that the Group required further support to achieve this objective and so the Community Facilities Manager was asked to contact the Group to provide this support. Where practical obstacles of this nature arise, Property Services and Legal Services will try to offer the Groups suggestions on how to deal with them or signpost Groups to other possible solutions including via other Council officers. Indeed, whilst the lease *negotiation* process must remain a formal one between the tenant and property/legal services, it has been agreed that wherever possible the Community Services team will continue to provide additional relevant support to community groups, including how Groups could increase usage (and hire income). That cannot, however, replace any group seeking independent legal advice.

8.1.6.3 Recommending independent legal advice

Both Legal Services and Property Services have recommended to Groups that they obtain independent professional advice in relation to the lease renewals. This suggestion is driven by both an awareness that the Council wishes to support community groups wherever possible, and the professional ethics of Solicitors and Chartered Surveyors which recommends that such encouragement be given to unrepresented parties.

8.2 **Ways NHDC supports community groups currently**

8.2.1 There are significant ways in which Groups are currently supported. As referred to at paragraph 8.1.6.2 above, the Community Facilities Manager continues to work with and assist Groups both in relation to the negotiation of the Leases and to provide advice on operational issues. This can include working with the Groups to assist them in maximising the income revenue they can realise from their community centre.

8.2.2 All centres currently benefit from the Council's compliance contract and associated repairs and maintenance free of charge.

8.2.3 A multi-year Capital Programme bid is being submitted, initially for £150k in 2014/15, for physical improvements to community centres following building surveys of all Council owned buildings. The programme of condition surveys will be complete mid-December 2013 and will lead to bids for subsequent years. If approved, these works are intended to address high-priority and essential works.

8.2.4 NHDC currently insures the community centre buildings and only recharges a couple of centres.

8.3 **Previous experience of the Council adopting a chinese wall approach**

8.3.1 At the meeting on 17th September 2013 Members of the Committee queried whether a "chinese wall policy" could be used to enable the Council to act for Groups. Reference was made to an example provided by the transaction relating to the Council's Housing Stock Transfer that was concluded in March 2002. Members were keen to understand if the model that had been used for the Housing Stock Transfer could be used to assist community groups.

8.3.2 For that transaction the Council had two internal negotiating teams established, each working with a different firm of external Solicitors. There were in effect additional external personnel sourced in order to enable the transaction to be progressed. This will have required additional significant funding.

8.3.3 The Corporate Legal Manager is unable at this stage to confirm further details regarding the transaction without considerable time being spent on obtaining and reviewing historical records.

8.4 **Issues to Consider**

8.4.1 Members have asked the Corporate Legal Manager to investigate whether it would be possible for the Legal Department to provide legal advice to Community Groups in respect of lease renewals. The question of whether the Council's Legal Department is able to provide legal advice to third parties generally, and specifically to Community Groups in respect of their leases, raises a number of issues.

8.4.2 Focusing specifically on advising community groups in relation to lease renewals, it is necessary to consider what assistance could be given to community groups in addition to the support already identified at paragraph 8.2 of this report. In officers experience, there are three key areas where community groups would benefit from additional support. In each of these areas there are substantial reasons why NHDC's legal team is unable to provide that support.

8.4.2.1 Advice on the terms of the existing lease and the legislative framework for negotiation

Aside from the wider issues identified by this report, the key obstacle to providing this type of advice to community groups is that to do so would not support the objectives of the Council's adopted Communities Halls Strategy. In order to advise Groups, there would be a need to critically analyse the Communities Halls Strategy. This could place the Lawyer in conflict with acting in the Council's best interests, for an in house solicitor to provide such advice would be contrary to the Law Society's code of conduct rules.

8.4.2.2 Negotiation on principal terms

The issues that are contentious in relation to these lease renewals are the practical issues which are negotiated by the parties at the beginning of a transaction before the instruction of solicitors. These are not issues Lawyers can assist with.

8.4.2.3 Right and remedies in the event that the proposed heads of terms remain unacceptable

The fallback position for both parties in the event that heads of terms remain unacceptable is recourse to litigation. The main advice that would need to be provided to Groups in this regard is the ability for the Tenant to apply to court for a new lease to be granted on terms determined by the court. Officers are employed to act in the best interests of the Council, and so could not advise in relation to litigation against the Council. Likewise the Council's statutory fall back position where a Lease arises from the statutory framework of the LTA 1954, is to issue proceedings in the event that agreement can not be reached. The statutory fall back position of litigation increases the risk of irreconcilable conflict arising throughout the transaction.

8.4.3 There are other points to consider in terms of legal's ability to undertake work for third parties.

- 8.4.4 The work legal services undertakes incurs a cost. Internally this is addressed via recharges. If work is undertaken for third parties the legal costs are chargeable. There are then important capacity and resourcing issues that must be balanced and considered alongside ensuring that the departments service plan is delivered, and Council projects supported. It is noteworthy that in many negotiating scenarios, financial and resource pressures often play a significant factor in leading the parties to reach agreement. If Groups were to be offered legal advice with no resulting financial or resource implications, then this may have the effect of lengthening rather than shortening the negotiation process.
- 8.4.5. The Council's Officials Indemnity insurance policy covers the legal liability to a third party for a financial loss caused as a result of an error or omission by a Council employee. This only applies to those services that the Council has a statutory *duty* to provide. If the Council offers a service to a third party, such as the community groups, under a statutory *power* then this potentially needs to be covered under a separate professional indemnity policy at additional expense. At this stage the potential cost of this has not been determined. A solution to this is that a Hold Harmless agreement is put in place. This would mean groups agree not to pursue the Council for any claim for a financial loss arising out of any advice or service received.

8.5 **Ways community groups can access lower cost professional advice**

- 8.5.1 Herts Community Solutions, a newly launched scheme by the County's Centres for Voluntary Services (which NHDC already grant fund) offers community groups a number of items of support. Those of particular relevance include access to high quality, experienced support and guidance from trusted and licensed service providers across Hertfordshire. This includes the ability to connect with volunteers who have specialist skills. Groups can submit a formal request for legal advice based on their individual circumstances and be matched to the most suitable adviser, at an agreed hourly rate. Further details and information are available at: <http://www.hertscommunitiesolutions.org/>.
- 8.5.2 There is also a national support network which can be reached online that provides basic advice on the steps required in negotiating a community lease and explains in plain English the terminology used. As an example, a handbook on negotiating community leases can be downloaded at a cost of £2 per copy and sets out the importance of establishing Heads of Terms. Further details and information is available at www.communitymatters.org.uk.
- 8.5.3 The Council is in a position of being able to assist and enable community groups rather than necessarily being in a position of being able to undertake work for them. The Council needs to work with community groups to encourage them to be independent and self sustaining, and as befits the Localism 'community rights' agenda, rather than retaining reliance on depleting Council resources.
- 8.5.4 Public Law Partnership ("PLP") (of which NHDC Legal Services is a member), is a legal services partnership of various authorities in Essex, Hertfordshire and Suffolk. Members of PLP work together to share resources and can provide public sector legal services to all legal bodies. This service is available at a cost to any community groups registered as charities.

8.6 Conclusion

- 8.6.1 Officers recognise that community groups are under considerable pressure and seek to do what is possible to assist and provide support, something which will continue of course. However this must also be within the confines of the Council's Community Halls Strategy and individual officers professional codes of conduct.
- 8.6.2 It is acknowledged that some form of 'chinese wall' was implemented for a previous legal transaction, however that included the procurement of two external legal firms to represent the respective interests involved in that transaction.
- 8.6.3 It is not open to Legal Services or Property Services to offer advice or undertake legal transactions for community groups based on the elements considered in this report. However the Council is able to continue to act as a signpost to assist community groups to locate alternative sources of professional support and information.

9. LEGAL IMPLICATIONS

- 9.1 Section 1 of the Localism Act 2011 'the General Power of Competence' empowers a local authority to do anything that individuals generally may do within the law.
- 9.2 The legal implications are otherwise considered within the body of the Report.

10. FINANCIAL IMPLICATIONS

- 10.1 Ongoing pressures on the Council's Revenue budget necessitate consideration of all aspects of expenditure, whether they be statutory or discretionary areas. This includes exploring options to reduce the costs and liabilities to which the council is exposed, as well as options for income generation.
- 10.2 As noted by the Task & Finish Group (paragraph 7.3) "leasing arrangements at peppercorn rents which required the council to repair and maintain the building was both a notional loss of income and an actual cost to the council's budget".
- 10.3 The Medium Term Financial Strategy (paragraph 7.3) states that "the Council will seek to manage all its assets cost-effectively and also to encourage community lessees to move towards running assets on a self-sustaining financial basis to reduce/remove the financial impacts on the wider taxpayer".
- 10.4 In order to maintain council owned properties in a functional and safe condition, a multi-year Capital Programme bid is being submitted, as part of the budget setting process for 2014/15 onwards. An initial figure of £150k has been requested for 2014/15 and further bids for later years will follow once condition surveys are complete. If approved, these works are intended to address high-priority and essential works.

11. RISK IMPLICATIONS

- 11.1 There is a risk that the Council continues to or increases the support it provides to community groups. In the light of the current financial climate that may then lead to having to reduce other Council services.

- 11.2 There is a risk that by withdrawing support, or being perceived as not to support community groups, the Council receives adverse publicity and pressure to override its agreed Community Halls Strategy.
- 11.3 If legal advice is provided to community groups, the Council's insurance arrangements may need to be extended to fully protect the Council and community groups. This may incur additional revenue expenditure.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 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 its 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 It is the intention of the Community Halls Strategy that important facilities for use by all members of a local community are not only retained wherever possible or appropriate, but their use and future sustainability increased as appropriate also.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this information note 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 in paragraphs 12 above.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no Human Resources or Equalities issues. However it should be noted that work associated with the Leases is absorbed by officers, and therefore financed from existing budgets.

15. APPENDICES

- 15.1 None

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

North Hertfordshire District Council Community Halls Strategy, Version 1, dated October 2011. This can be found on the Councils website:

http://www.north-herts.gov.uk/index/community_and_living/community_centres_and_facilities/community_halls_strategy.htm