

Taunton Deane Borough Council

Full Council – 9 April 2013

Potential Purchase of the Brewhouse Theatre and Options for the Future

Report of Strategic Director – Brendan Cleere

(This matter is the responsibility of Executive Councillor Norman Cavill)

1. Executive Summary

This report seeks Full Council approval of a bid to purchase the remaining lease on The Brewhouse Theatre and assets within, together with approval of a process to facilitate a sustainable future for the venue.

Trustees of the Brewhouse Theatre – an independent charity – decided to appoint administrators resulting in the closure of the venue on 21 February 2013.

Administrators have a duty to secure maximum value for the assets and a marketing exercise is currently under way. The deadline for bids for the remaining 61 years of the existing lease is 12 April 2013. The Council owns the land and the lease contains a number of restrictive covenants, giving the Council powers to ensure that the use remains as a theatre.

A valuation exercise has been carried out and a bid has been submitted to the administrators, subject to Full Council approval.

There are financial implications associated with owning this property, which are outlined in the confidential Appendix.

There are risks associated with owning the property which are outlined in section 11.

An independent consultant is currently being appointed to advise on potential operating models and proposals emerging for the operation of the theatre. It is recommended that the work of this consultant is overseen by Group Leaders, together with the portfolio and shadow portfolio holders and the Chairman of the Taunton Cultural Consortium.

2. Background

- 2.1 Management and trustees of the Brewhouse Theatre and Arts Centre approached the Council in early January 2013 to give notice of their severe financial predicament and to request significant additional funds to enable the venue to continue trading.
- 2.2 The Council provides a grant of £152,000 per annum to The Brewhouse, and Group Leaders were unanimous in their view that there should be no further funding without a clear recovery plan, showing how the theatre could be put onto a sustainable financial footing.
- 2.3 Trustees of the Brewhouse (an independent charity) then engaged a firm called BDO – specialists in financial insolvency and administration – to advise on their options for the future. This resulted in trustees recommending an option whereby the theatre would be placed into administration and the administrators would immediately enter into a license with the Council to enable the theatre to remain open.
- 2.4 Again, Group Leaders were unanimous in their view that the Council could not consider entering into a license with the administrators, due to the scale of the financial risks and uncertainties involved.
- 2.5 BDO were formally appointed as administrators of The Brewhouse on 21 February 2013 and the venue closed on that day.
- 2.6 The administration process is ongoing and BDO are currently marketing the remaining 61 years of the lease on the property, with a deadline for offers of 12 April 2013. The proceeds of any sale will be used by the administrator to cover their costs and to pay outstanding creditors.
- 2.7 The Council's annual grant of £152,000 remains protected in the 2013/14 budget towards any successor venture. A further sum of £35,000 was also set aside in February 2013, to assist with any costs incurred in protecting the Council's interest in the asset and facilitating a sustainable future for the venue.

3. Potential Purchase of The Brewhouse

- 3.1 As described above, administrators are currently marketing the 61 year lease remaining on the building, with a view to achieving the best possible price in accordance with their legal duties to former trustees and creditors. As landowner and owner of the freehold for the building, the building would otherwise revert to the Council in 61 years' time.
- 3.2 Group Leaders have expressed support in principle for the submission of a bid to buy out the remaining 61 year lease on the venue, as a means of both protecting the asset and having a strong role in facilitating a

- sustainable future for the theatre. On the latter issue, there was support for the principle that the Council should act as facilitator, rather than prospective theatre operator.
- 3.3 A detailed valuation exercise has subsequently been undertaken and a bid submitted, subject to contract, Council approval and a detailed survey. Details of the bid value are attached in Appendix A (confidential).
 - 3.4 The closing date for bids has been set as 12 April 2013. Formal Council approval would lend credibility to the bid that has been submitted, with the associated guarantee of support and availability of funds that such a decision would bring. On the other hand, the Council may decide not to support the bid that has been submitted, due to the associated cost and risks involved.
 - 3.5 Additional 'Holding costs' for the property are estimated at up to £140,000 for a twelve month period and £69,000 for a six month period. These costs include utilities, 24 hour security, insurance and business rates.
 - 3.6 As mentioned in section X, the offer submitted is subject to survey. There are potential additional costs associated with any works required on the structure of the property and its electrical and mechanical infrastructure. Following acceptance of any offer by the Council, a survey will be carried out to establish these costs in more detail. It is recommended that delegated authority is given to the steering group described in section 4.2 to consider these costs and decide whether to proceed with the purchase.

4. Determining Options for the Future of The Brewhouse

- 4.1 A process is currently under way to appoint an independent consultant to advise the Council on options for the future of the venue and also to advise on emerging interest and potential proposals to run the theatre. The consultant will start work by the end of April 2013 and will be required to submit a report by the end of July 2013. This is to be funded from the £35,000 budget already approved.
- 4.2 It is proposed that the work of the independent consultant is overseen at key intervals by a steering group comprising Group Leaders, the relevant Portfolio and Shadow Portfolio Holders and the Chairman of the Taunton Cultural Consortium. A key role of the steering group would be to look at the financial viability of any emerging models, as well their alignment with the commitment to a thriving arts and cultural scene in Taunton. The steering group will also consider any property related costs established by a detailed survey.
- 4.3 The consultant's report content will depend on a number of variables which are not known at this stage, such as whether the Council acquires the property and the nature and viability of any interested parties' proposals to run the theatre.

- 4.4 The final report of the consultant will be subject to scrutiny and further decision, if appropriate, by Executive and Full Council.

5. Finance Comments

- 5.1 As highlighted earlier in this report, there are both capital and revenue costs associated with acquiring and holding the asset. There are also potential unforeseen additional costs that could be identified by the proposed survey should the bid be successful, which the Council may face an obligation to address or pass on the liability through any subsequent lease arrangement.
- 5.2 Further comments are provided within the Confidential Appendix.

6. Legal Comments

- 6.1 As the Council owns the freehold of the Brewhouse, if the Council acquires the lease, the lease will merge with the freehold and cease to exist. The Council could then grant a new lease on such terms as can be agreed with a new tenant. If the Council does not acquire the lease there is a restriction on assigning the lease to a new tenant. If the Administrator sought to assign the lease in breach of the terms of the lease then the Council could (if they chose to do so) take enforcement action through the Court.

7. Links to Corporate Aims

- 7.1 A vibrant arts and culture scene makes a significant contribution to the local economy and the Council's growth and regeneration priority.

8. Environmental Implications

- 8.1 There are no specific environmental implications arising from this report. Should the Council acquire the property, any improvements works required would need to consider environment and sustainability issues.

9. Community Safety Implications

- 9.1 24 hour security is currently in place to protect the property against potential vandalism or anti-social behaviour. If the Council acquired the property, the holding costs referred to previously in this report include continuation of 24 hour security.

10. Equalities Impact

- 10.1 The closure of the Brewhouse has impacted on many groups and individuals.

10.2 An Equalities Impact Assessment will be carried out in respect of any subsequent business case from a third party to re-open and run the theatre, which depends on support of the Council. These matters will also be considered by the steering group referred to previously.

11. Risk Management

11.1 Key risks associated with this report are set out below:

Risk	Comment/Mitigation
A bid from the Council is not acceptable to the administrators	The Council will be able to exert significant influence over prospective purchasers through the terms of the lease.
The Brewhouse is acquired by a third party, resulting in a potential reduction in the amount of control that the Council can apply over the future of the venue.	Whilst the Council would lose a degree of control over the venue, the terms of the remaining lease are such that the Council can still exert substantial influence, through the terms of the lease, over the future of the venue.
The Brewhouse is acquired by a third party, who expects TDBC to provide unconditional support for their activities.	Restrictive covenants give TDBC substantial influence over the use of the venue. Members are strongly advised not to lend support of any kind to any third party unless a sustainable operating model is in place. This will take some time and the independent consultant will advise in this regard.
The costs of 'holding' the asset in the event of the Council owning the venue are deemed too high and/or property related costs are prohibitively high following detailed survey.	This is a matter for members to consider in deciding whether or not to endorse the bid that has been submitted. Should the Council's bid be accepted by administrators, it is recommended that authority be delegated to the steering group referred to in section 4.2, should a detailed survey reveal prohibitive property related costs.
Following purchase of the venue, the Council fails to find a party willing to operate it.	The proposed steering group will be notified at the earliest possible stage whether any operating models have a realistic prospect of success in financial terms. It is suggested that alternative options for the venue may be needed if a successor operator cannot be found during the period to Christmas 2013.
Following purchase of the venue, there is pressure on the Council to open the	It is strongly advised that the Council does not bow to pressure to open the

doors prematurely, and without a clear and sustainable operating plan.

doors prematurely, without a clear and financially viable operating model in place. The independent consultant will advise on this matter.

12. Partnership Implications

12.1 There are no partnership implications at this stage.

13. Recommendations

13.1 Full Council is recommended to:-

- (i) Decide whether to give its endorsement for the bid which has been submitted, details of which are provided in Appendix A (confidential).
- (ii) Should such endorsement be given, to approve the mechanism described in Appendix A (confidential) for funding the purchase and the associated 'holding costs' and subject to further consideration of likely property related costs to be established through a detailed survey.
- (iii) Approve the establishment of the Steering Group (described in section 4.2) to oversee development of options for The Brewhouse and to delegate authority to the Steering Group to decide whether to proceed with any purchase, should a detailed survey reveal excessive property related costs.

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