

Taunton Deane Borough Council

Full Council – 23 July 2013

Potential Acquisition of the Brewhouse Theatre and Arts Centre

Report of Strategic Director – Brendan Cleere

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

1. Executive Summary

This report seeks Full Council consideration of the potential purchase of the remaining lease on The Brewhouse Theatre and assets within

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

Administrators are now seeking to surrender the lease and sell the contents to the Council, in return for an appropriate sum. 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 mandate to continue negotiations with the administrators was given by Full Council in April 2013. These negotiations have been ongoing since that time, with Group Leaders briefed and providing policy guidance at all key stages.

Matters have now reached a point where the Council has reached an ‘in principle’ agreement with administrators, subject to Full Council approval.

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

The financial implications associated with owning this property are outlined in the confidential Appendix.

An independent consultant has been appointed to advise on potential operating models and proposals emerging for the operation of the theatre. The work of this consultant will be overseen by a Steering Group approved by Full Council in April 2013, comprising Group Leaders, 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 provided a grant of £152,000 per annum to The Brewhouse, and the view was taken 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, the view was taken 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 looking to sell the remaining 61 years of the lease.
- 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 Full Council (9 April 2013) gave a mandate for continued negotiations towards the purchase of 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. It was agreed that the Council should act as facilitator, rather than prospective theatre operator.
- 3.2 A detailed valuation exercise has been undertaken and negotiations are ongoing with administrators over the potential acquisition of the building and contents. Appendix A (confidential) provides a summary of these negotiations and a number of recommendations for consideration by Full Council.

- 3.3 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.
- 3.4 A survey of the building and infrastructure has been carried out and costs associated with this are referred to in the confidential appendix.

4. Determining Options for the Future of The Brewhouse

- 4.1 An independent consultant has been appointed to advise the Council on options for the future of the venue. The range of potential options are many and varied, including potential for the use of the venue as a 'learning theatre' promoted by Somerset College, a wholly community run operation, a fully commercial model or potentially a mix of different approaches. The timetable for implementation of any new venture will depend to a large extent on whether the Council acquires the venue and the merits of the business case for the different operating models being proposed.
- 4.2 At this stage, the consultants have met with a range of potential interested parties and they are scheduled to complete their work in Autumn 2013 (this timetable is indicative and subject to clarification on ownership of the Brewhouse). The final report of the consultant will be subject to scrutiny and further decision, if appropriate, by Executive and Full Council.
- 4.3 The work of the consultants will be overseen at key stages by the Steering Group of elected members approved by Full Council in April 2013.

5. Finance Comments

- 5.1 As highlighted elsewhere in this report, there are both capital and revenue costs associated with acquiring and holding the asset. There are also costs which have been identified by the recent survey which the Council, should it acquire the building, may face an obligation to address or pass on the liability through any subsequent lease arrangement.
- 5.2 Further comments are provided in 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 Courts.

6.2 Further legal comments are provided in the confidential appendix.

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 improvement 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 in the Executive Summary and in the previous report to Full Council (April 2013).

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	Whilst the Council would lose a degree of control over the venue, the terms of the remaining lease are such that the

Risk	Comment/Mitigation
Council can apply over the future of the venue.	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 proceed with a purchase of the venue
Following purchase of the venue, the Council fails to find a party willing to operate it.	The 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 any surrender of the lease to the Council, there is pressure to 'open the doors' prematurely, and without a clear and sustainable operating plan.	It is strongly advised that the Council does not bow to pressure to open the 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 decide whether or not to proceed with acquisition of the Brewhouse, based on the further details provided in Appendix A (confidential).

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