

CABINET

DATE	4 September 2019
REPORT OF	Councillor John Fenty – Portfolio Holder for Regeneration, Skills and Housing
RESPONSIBLE OFFICER	Sharon Wroot – Director of Resources and Governance
SUBJECT	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Lease disposal of Haverstoe Pavilion, Haverstoe Park, Aldrich Road, Cleethorpes, North East Lincolnshire, DN35 0DP
STATUS	Open
FORWARD PLAN REF NO.	CB 08/19/04

CONTRIBUTION TO OUR AIMS

The disposal of Haverstoe Park Pavilion (the “Site”) by way of a 125 year; full, repairing and insuring lease will enable WANO-WANO (Waste NOt, WAnt NOt) Community Interest Company (C.I.C) (No. 11133874) (the “Group”) to take over the vacant building.

The intention is to create a use, management and operation of the above site. Providing a lease for the above term at a peppercorn rent is based on the submission of a detailed Business Case proposal setting out the economic, environmental and social return on investment; the benefits of which far outweigh the monetary value that would be requested in rent over the term.

The lease disposal supports the Council’s outcome of ‘Stronger Economy’ by enabling the Group to lease the premises for a sufficient period and by granting the rent at a peppercorn, ensures the proposal remains sustainable for the longer term. There would be no continued financial constraint placed on the Council in the management of this asset which will meet our determination to be an efficient and effective Council.

The lease will also contribute directly towards the Council’s aim of supporting the development of ‘Stronger Communities’ by empowering the Group to take on localised ownership, shaping their own future, providing support and opportunities for residents and visitors of the Borough. By enabling this lease, the Council will take reasonable steps to ensure that any term is viable for tenants and does not put local communities at financial risk.

EXECUTIVE SUMMARY

This report seeks authority to dispose, by way of a 125 year; full, repairing and insuring lease, of the subject site; namely Haverstoe Park Pavilion, Cleethorpes. The purpose of this report is to gain agreement to the Business Case proposal from WANO-WANO, which will provide a social return on investment; far outweighing monetary equivalent

to otherwise proposed rent as part of the Council's approach to Community Asset Transfers (CAT). Approval to the proposal will allow the granting of a lease of the site over the stated term at a peppercorn rent (£1 per annum, if demanded).

The lease proposal is preferred due to the building being situated within an established and historic Park. The lease would allow the Council to retain an element of control as Landlord but it is proposed the Group will invest in the building to create a Community Hub whilst retaining the changing rooms and toilet facilities in support of the wider Park use.

RECOMMENDATIONS

It is recommended that Cabinet:

1. Approves the principle of a full, repairing and insuring lease of the subject site for a term of 125 years at a peppercorn rent (£1 per annum if demanded) to WANO-WANO, Community Interest Company (the "Group");
2. Delegates to the Director of Resources and Governance in consultation with the Portfolio Holder for Regeneration, Skills and Housing authority to settle all heads of terms and ensure that all necessary actions are carried out in order to complete the lease disposal;
3. Authorises the Chief Legal and Monitoring Officer to complete and execute all requisite legal documentation in relation to the matters outlined above.

REASONS FOR DECISION

A proposal has been received by WANO-WANO which has been considered as part of the Council's approach to Community Asset Transfer (CAT). The proposal has been agreed in principle which could result in the transfer of the subject site to the Group by virtue of a 125 year full, repairing and insuring lease. The lease would enable the asset to transfer to the Group on the basis that their proposal is sustainable and viable over the term, including the obligations to manage and operate the premises, as outlined through a detailed Business Case.

1 BACKGROUND AND ISSUES

- 1.1 The Council is the freehold owner of Haverstoe Park, including the subject Site; for the purposes of this report, the Site is shown edged blue indicating the extent of the asset to be leased to WANO-WANO and the wider site is outlined red as per the attached plan at Appendix One.
- 1.2 The Site is currently mostly vacant and whilst subject to two licenses for access and use of the changing rooms/ toilets and storage from two football teams, is not in a good state of repair or used to the full extent of its potential.
- 1.3 The Council has an agreed Community Asset Transfer (CAT) approach to consider proposals where certain organisations and groups demonstrate they contribute significant social, economic or environmental benefits to the community - benefits which can be taken in lieu of the monetary value being proposed in rent. The CAT

approach allows proposals to be considered through an agreed governance process, including in principle support at key milestones, resulting in a formal Cabinet approval.

- 1.4 The proposal, by way of a detailed Business Case was received from the Group and further to supplementary information being provided, was considered at a Stage 3 CAT meeting and recommended to decision makers for in principle support.
- 1.5 When considering proposals such as these, the Council must demonstrate the social return on investment reflects, as a minimum, the loss of any potential rent, and reasons that a rent element could impact negatively on the sustainability which may result in the management of the site becoming unsustainable. The Council has been satisfied that the proposal to approve a 'less than best' transaction is based on sufficient social and economic benefit, which is stated as part of the submitted Business Case. The figures provided, whilst requiring necessary factors to be taken account of, clearly far outweigh the monetary value that could be requested in rent and supports wider community benefits which are of a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.
- 1.6 The proposal to set the level of rent at a peppercorn would ensure the use and management of the site remains sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the premise will be that of the Group, as would all future investment opportunities.
- 1.7 The Council must also consider the strategic reasons why it continues to hold property no longer in operational use. The Council's freehold interest in the wider Park, which includes the subject site, to dispose of the freehold of the site would break up the physical landholdings and is therefore not considered beneficial. The proposed lease therefore will see the site being brought back into full use by the Community, as this has not seen effective use in recent years by the Council or its Partners, and would benefit from the proposal from the Group.

2 PROPOSAL

- 2.1 A proposal received from WANO-WANO, CIC sets out the Groups objectives for a 'Community Hub' to encourage people to come together in a safe place, through the provision of activities and events and the sale of reasonably-priced, high quality, food and drink. The Group promote an environmentally-minded, waste not, want not (WANO-WANO) approach which will be embedded in their ethos.
- 2.2 The Business Case evidences this need using local market research. The 'Social Return on Investment' analysis provided indicates a host of wider benefits this proposal would bring to the Borough.
- 2.3 The lease will be granted on a full, repairing and insuring obligation as well as responsibility for the operational costs of the building. This would result in a saving to the Council on average of c£3k per annum.

- 2.4 The Group have already been successful in seeking to secure grants, directed at improvements towards the building condition.
- 2.5 The profit and loss balance sheet included in the Business Case shows an overall healthy position over a three (3) year period, which is predicated on an initial starting balance in year one (1). The starting balance and ongoing annual income result in an average surplus each year which means the balance from year one will increase, if the proposed income is maintained, or subsequently reduce if the income level reduces. However, a reserve is built in and will be held to mitigate any reduction.
- 2.6 One of two income streams directly associated from the proposal that has been stipulated is a Café. As the Group are a registered Community Interest Company (CIC), the Group state any surplus will be reinvested into the activities outlined in the Business Case. There is also reference to hiring of the Community space for meetings/ activities.
- 2.7 It is clear to see from the Business Case that the Group are keen to develop and manage the premises and in progressing a CAT, the Group demonstrates the sustainability and viability required in the longer term. The Business Case is well articulated and shows the Group are capable of establishing a successful operating model for the premise during the period of their occupancy and are enthusiastic, knowledgeable and are very active in continuing a profile and involvement in the local area.
- 2.8 The proposal and social return on investment provides sufficient assurance of the viability of the proposal in respect to the financial standing of the Group and that they have the necessary resources in place required in managing this type of premise.

3 CONSTITUTIONAL REQUIREMENTS

- 3.1 The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration (“the Protocol”) which contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property		
The Council’s partner in the provision of estates and valuation services, ENGIE Services Limited, has provided a valuation report from a qualified Chartered Surveyor which contains the following key information.		
	Capital	Annual Rent
Unrestricted Value (i.e. market value / market rent)	£62,000 (sixty two thousand pounds)	£5,850 (five thousand eight hundred and fifty pounds)

Less Restricted Value (i.e. at proposed rent)	£20 (twenty pounds)	£1 (one pound)
Equals Discount (i.e. total amount of undervalue)	£61,980 (sixty one thousand nine hundred and eighty pounds)	£5,849 (five thousand eight hundred and forty nine pounds)
<p>The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if it is approved.</p>		
<p>(ii) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e. social, economic and environmental benefits)</p>		
<p>The property would remain surplus and predominantly unoccupied with associated running costs. The value of the proposed asset transfer in non-monetary terms cannot be quantified. Nevertheless, a transfer to the Group supports the Council's outcomes of a 'stronger economy' and 'stronger communities'. It provides the Group with a sustainable platform from which to deliver its own objectives. The proposed transfer passes the building's running costs to the Group thus representing a saving to the Council.</p> <p>The Groups objectives are to provide a local hub which will improve community spirit, reduce social exclusion, help to tackle anti-social behaviour and boost local prosperity. The outcomes of these objectives include the following:-</p> <ul style="list-style-type: none"> • impact of the activity on the community it serves; • costs outside of 'business as usual' of delivering this intervention; • impact of new activities including increased access to complimentary therapies; • impact of the intervention for the Local Authority as a result of the transfer of the asset; • social value of the impact against the cost. <p>All these outcomes affect peoples' lives and cannot be directly quantified. Notwithstanding there is a significant cost to the Borough in dealing with the issues and any opportunity to reduce the numbers of those affected must be embraced.</p>		
<p>(iii) Confirmation that the disposal will contribute positively to the Council's priorities.</p>		
<p>The Community Asset Transfer will contribute positively to the Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.</p>		
<p>(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the lease takes place at an</p>		

undervalue rent and confirming that no reasonable alternative means of funding are available to the purchaser.
WANO-WANO is a Community Interest Company which will make little surplus on operating cost. Any surplus which will be achieved will go towards furthering the objectives of the organisation. It relies on grant funding via various sources. Without funding, the benefits the Group achieves for the Borough could not be fulfilled.
(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.
A full Business Case was received and considered. The proposed tenant is considered to be of sound grounding and has the ability to provide the use requested by Cabinet to benefit both the ward and the wider community.
(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic and environmental wellbeing of the area. <i>NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy</i>
Heads of terms to be finalised but based around the following:- <ul style="list-style-type: none"> • 125 year lease, contracted out • £1.00 per annum rent • Use to be for café, community space, toilets and changing rooms • Tenant responsible for full repairing and insuring • Landlord to insure building, tenant to reimburse the cost of premium. Tenant responsible for insuring contents, fixtures and fittings • Utilities to be procured by landlord on corporate contract, tenant to reimburse landlord for cost of utilities including any standing charges • Absolute bar on assignment and sub-letting • Each party to bear its own professional fees in preparing the legal documentation
(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.
See Section 10 of this Report “Legal Implications”
(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium Term Financial Plan.

There must demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value

See Section 9 of this Report “Financial Implications”

- 3.2 **ESTATES PROGRAMME BOARD** - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.
- 3.3 **STATE AID RULES** - The Protocol further requires that the Council ensures that the nature and amount of any undervalue complies with the European Commission’s State Aid Rules and does not create a state aided subsidy for a commercial organisation. That requires the application of the follow tests:

3.1.1 Is the value of the benefit below the threshold set by the De Minimis Aid Regulations?	
Yes	
3.1.2 Do the General Block Exemption Regulations apply to the proposal?	
No	
3.1.3 Does the proposal meet any of the following 5 State Aid criteria? <i>Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute State Aid:</i>	
Is the measure granted by the state or through state resources?	Yes
Does it confer an advantage to an undertaking?	Yes
Is it selective, favoring certain undertakings?	Yes
Does it distort, or have the potential to distort, competition?	Yes
Is the activity tradable between member states?	No

4 RISKS AND OPPORTUNITIES

- 4.1 The risk to the Council in progressing with a lease to the Group is considered minimal. In the scenario of a lease, should the proposals no longer be viable, the option to relinquish the premise back to the Council and ultimately seek alternative opportunities or decommissioning could be pursued which would avoid the site incurring any future operational cost.
- 4.2 Future risks remain with the Group in respect to the operational costs of utilities etc. and the obligation of repair and maintaining a building to an acceptable standard to ensure ongoing use.

- 4.3 There are no identifiable environmental sustainability implications as a result of the proposal, as it is the intention that the condition of the premise will be maintained and improved on the basis of an operational use. The long lease will allow the Group to expand and continue to occupy the premise and would allow for potential external funding to be obtained, allowing for ongoing maintenance and further improvements. The continued use will be a positive reflection to the street scene within an established and well used area within this part of the Borough and will reduce the financial commitments of the Council.

5 OTHER OPTIONS CONSIDERED

- 5.1 To do nothing would see the asset continue to be under-utilised and would not allow the Group to create a Community Hub. The condition of the building would continue to deteriorate attracting Anti-Social Behaviour and all the repair and maintenance obligations and cost would rest with the Council. This would result in a negative impact to both the Group and community. The Group have presented a robust Business Case which demonstrates extensive social return on investment which requires a longer term lease in support of the proposal and result in a use of the site. It is not considered a viable option to continue to manage the site as is currently as the Council risk unnecessary and negative publicity as well as potentially being wholly liable for the site, together with all future associated expenditure including any missed opportunity of investment into or expansion of the potential use and activities.
- 5.2 The freehold disposal of the site has not been considered at this time. A leasehold arrangement is more relevant given the wider Park and ensures the Council retains an element of control. This is in respect of mitigating risk in maintaining the condition of the building and in the event the proposal is no longer viable which impacts on the on-going use of the building. This would enable the Council to take action to seek alternative use of the site and prevent any unauthorised uses, which a freehold disposal would remove.

6 REPUTATION AND COMMUNICATIONS CONSIDERATIONS

- 6.1 There are positive reputational implications for the Council resulting from the decision to support a lease to the Group. The lease agreement will primarily enable continued use of the premise and will allow expansion and the proposal to receive specific, tailored and localised management and the opportunity to invest and improve the site for the benefit and use by the community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

7 FINANCIAL CONSIDERATIONS

- 7.1 The proposal outlined within the report supports the Council's key outcomes of a stronger community, by enabling the Group to create an offering and support to the community and in maintaining the condition of the Site; enable community use and will ensure a Public owned Site to be used, enhanced to support a recognised demand.
- 7.2 The repair and maintenance cost of the site will be financed through the Group's own resources. Any future investment will be subject to the Groups own resources

and access to grant funding which will remove the financial commitment from the Council.

- 7.3 On an ongoing basis the proposal will require no capital and revenue expenditure to be provided from the Council and result in an average annual revenue saving of circa £3k. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

8 CONSULTATION WITH SCRUTINY

- 8.1 There has been no consultation with Scrutiny to date.

9 FINANCIAL IMPLICATIONS

- 9.1 As outlined in the report, the potential loss of market rent through the peppercorn lease is far outweighed by the social return on investment and wider benefits to the community.
- 9.2 Revenue costs of circa £3k per annum will be saved by the Council and future liabilities for maintenance and other running costs will also transfer to the Community Interest Company.

10 LEGAL IMPLICATIONS

- 10.1 Local Government Act 1972, s123, provides that the Council may dispose of land in any manner it sees fit subject to the constraint that (except in the case of leases for less than 7 years) disposal must be for the best consideration reasonably obtainable.
- 10.2 The General Disposal Consent (England) 2003 provides a general consent removing the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposing Authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).
- 10.3 Constitutionally and as outlined in the above report the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed lease is capable of falling within the terms of the General Disposal Consent (England) 2003.
- 10.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:
- a) the amount of undervalue would be below the £2m threshold;
 - b) it is the professional opinion of the Director of Resources and Governance that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.

- 10.5 The Scheme of Delegation in the Constitution provides for the Director of Resources and Governance to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration, and maintain a register of all undervalue disposals. This report therefore complies with those provisions.
- 10.6 In terms of State Aid, it is clear from the analysis set out earlier in this report that, the proposal would fall within the De Minimis Regulation. This recognises that small amounts of aid (less than €200,000.00 over a rolling 3 year period) are unlikely to distort competition.
- 10.7 It is recognised and accepted that long term security of tenure can be advantageous to a provider and sometimes necessary to secure funding or render an investment capable of delivering a return.

11 HUMAN RESOURCES IMPLICATIONS

- 11.1 There are no direct HR implications contained within this report.

12 WARD IMPLICATIONS

- 12.1 This proposal directly impacts on the Haverstoe Ward.

13 BACKGROUND PAPERS

- 13.1 There are no background papers to this report.

14 CONTACT OFFICERS

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