

REPORT FOR: Portfolio Holder Decision

SUBJECT: FLASH MUSICALS (GRANTING OF LEASE)

Responsible Officer: Paul Nasjarek, Corporate Director of Community Health & Well Being

Caroline Bruce, Corporate Director of Environment & Enterprise

Portfolio Holder: Councillor Thaya Iddaikadar, Leader of the Council and Portfolio Holder Business Transformation & Communications, Finance, Performance, Customer Services & Corporate Services, Property & Major Contracts

Key Decision: No

Urgent/Non Urgent: No

Decision subject to Call-in: Yes

Power to be exercised: Paragraph 2 (iii) of the appendix to the Executive Procedure rules

Exempt: No

Enclosures: None

Section 1 – Summary and Recommendations

This report sets out proposals and terms for renewal of the lease to Flash Musicals Youth Theatre for the premises at Methuen Road Edgware currently occupied by the organisation.

Recommendations

The Portfolio Holder is requested to:

- i) Authorise the Corporate Directors Community Health & Well Being and Environment & Enterprise to approve the leasing of the premises at Methuen Road, Edgware Middlesex, HA8 6EZ to Flash Musicals on the terms outlined in 2.2.2 together with any other terms considered appropriate.
- ii) Authorise the Director of Finance & Assurance to make payment from the Council's General fund in respect of previous services delivered to the Council, subject to final verification of the services delivered by Flash Musicals to Harrow Council by Flash Musicals, to settle monies outstanding to the Housing Revenue Account on the rent of the above premises as outlined in paragraph 2.2.2
- iii) Instruct the Corporate Director Community, Health & Well Being to enter into Service Level Agreements with Flash Musicals for the delivery of services as outlined in paragraph 2.2.2.

Reason: (For recommendation)

To permit the continued operation of Flash Musicals at Methuen Road Edgware and to resolve the historic monies owed to the Housing Revenue Account.

Section 2 – Report

2.1 Introductory paragraph

Flash Musicals(FM) have occupied the premises at Methuen Road Edgware under a five year lease from Harrow Council since 1 April 2008 and are now holding over as tenants pending a decision by the Council. The current rental for the premises is set at £25,000 pa. The Council is specifically aware that Flash Musicals have invested capital of £50,000 Big Lottery Funding into the building since 2007 and FM have indicated capital investment of a further £100,000 (refurbishment of toilets, heating, disabled toilets, lighting). Flash Musicals have sent information to the Council that they have delivered services to the Council over the lease period to the value of £103,000 and this has been considered by Members.

The terms of the lease and the agreement with the Council for the occupancy of the premises have been under dispute since the end of the first year of the term, April 2009. The Council and the organisation have wanted to resolve the situation since that time. Key issues are the resolution of the historic funding

gap to the Housing Revenue Account due to the ongoing dispute (currently at c £72,000), the renewing of the lease and the setting of an appropriate rent level.

Members want to ensure that Flash Musicals continues to operate successfully and contribute positive outcomes for the local community in one of the most deprived wards in Harrow and have therefore asked officers to find a solution which supports this outcome, subject to assurances on a number of issues such as user demographics, financial reserves etc. Members have asked for the solution to be based on affordability for the organisation so that Flash can continue to operate in this building but also so that the historic issues are settled and do not re-occur.

2.2 Options considered

In developing recommendations, the Member considered all of the information available and the options for resolving longstanding issues.

2.2.1 Options considered are as follows:

Option a) Current situation continues.

Flash Musicals is allowed to remain in the Methuen Road building delivering services. The lease granted in 2009 did not automatically lapse on 31st March 2013 and it is a protected tenancy under the Landlord and Tenant Act 1954 and thus Flash Musicals are holding over under the terms of this lease. It is believed that under this option, the ongoing dispute would not be resolved and would not regularise the current situation but would expose the Council to further financial uncertainty regarding the annual rent which would accrue at a rate of £25,000 pa and potential investigation by the Auditors. This would also not give the organisation the certainty they have asked for which could hinder their ability to gain external funding and secure a sustainable future.

The Member does not support this option.

Option b) Oppose renewal of the lease and/or repossess the building.

The lease did not automatically lapse on 31 March 2013 as it is a protected tenancy under the Landlord and Tenant Act 1954. Under this Act the Council could bring the tenancy to an end by serving a section 25 Notice, giving not less than six months' notice. The tenant, Flash Musicals, could seek a new lease which the Council could oppose on the grounds of a persistent delay in paying rent, meaning a history of non- or late payment over a period of time. The Council would need to prove that there have been arrears of rent. It would then be for Flash Musicals to persuade the court that it should be granted a new lease despite of this. The court has discretion when deciding whether to renew the tenant's lease or terminate it under this ground. Even if it is found that the tenant has persistently delayed paying the rent, a new lease may be granted. This would be a complicated approach to seek possession of the premises and could mean that the services of Flash Musicals would be potentially lost to the local area.

There are various other options for the Council to take possession of the premises:

- The Council may forfeit (i.e. terminate) Flash Musical's lease on the basis of non-payment of rent. This is known as 'peaceable re-entry' and involves instructing bailiffs to repossess the premises and taking further legal action to recover the disputed monies owing to the HRA. As there is currently an independent nursery also operating from these premises, this could potentially cause disruption to young children and their families. This option would not necessarily secure payment of the monies owing but would give the Council vacant possession of the property, subject to the possibility of the nursery successfully claiming relief against forfeiture.
- The Council could seek recovery of the disputed monies owing by way of a debt action against Flash Musicals by distraining against the premises (i.e. sending in bailiffs), in addition to or instead of seeking forfeiture of the lease. The Trustees of Flash Musicals are personally liable to the Council and could be pursued for payment of the monies owing, although the amount of their liability is limited to the assets for the time being of Flash Musicals. This option would not necessarily secure payment of the monies owing nor would action to recover the arrears of itself give the Council vacant possession of the property.

It is the Council's experience that properties in this type of community use are sought after by occupiers and that they attract a premium within the market and therefore subsequent disposal of the property by lease or freehold sale will be possible. However, this option would mean that the services of Flash Musicals would be lost to the local area and the nursery organisation could also be affected through short-term disruption.

Flash Musicals have indicated that they would seek to legally challenge any such actions by the Council and this could expose the Council to reputational damage. If the Council successfully opposed the renewal of Flash Musicals' lease on the grounds of non-payment of rent or persistent arrears, it would not be obliged to pay the organisation compensation.

The Member does not support this option.

Option c) Appropriation of the Community Centre from the Housing Revenue Account (HRA) to the General Fund to allow more flexibility in the lease terms, setting of rent etc.

A Cabinet decision would be required to identify funding from the General Fund to reimburse the HRA and transfer the asset to the General Fund, to allow flexibility in the setting of rent etc or the ability to redevelop and/or reprovide the community facility. The tenancy would still apply under the terms of the Landlord and Tenant Act 1954 for a new lease. The book value of the property subject to the existing tenancy is c £250,000 and possibly £800,000+ (with vacant possession and dependent on planning consents). The site is in a floodplain/flood zones which would constrain the type of use/development, but is not subject to any other designations. It is however a community centre and current policy protects against the loss of this type of use and experience has shown that there is a premium value attached to this use of property within the borough. Any redevelopment should ensure re-provision of the community use and should comply with the sequential approach in terms of appropriate uses in flood zones. This option would not

resolve the current situation without the potential of significant expenditure from the Council's General Fund.

Option d) Renew the lease with Flash Musicals and identify funding from within the Corporate General Fund to cover the historic monies owing to the HRA and to subsidise the current ongoing annual rent of £25,000pa

This option would require the identification of corporate General Fund to cover the outstanding monies to the HRA and a revenue budget to provide the necessary funding to support rental costs, as it cannot be contained within any existing departmental budgets. The estimated cost would be £25,000 pa and the current monies owing stands at circa £72,000. Flash Musicals have indicated that they can pay only £7,000 pa. This option would not be in line with the treatment of other community organisations occupying Council premises, where SLAs are in place for the delivery of services and this level of rent subsidy is not available to those organisations on an ongoing basis.

Option e) Renew the lease with Flash Musicals and identify funding from the Corporate General Fund budget to:

(The property has an annual market value rent of £25,000.)

- **Reimburse Flash Musicals for services delivered and cover the historic monies owing to the HRA of £72,000**
- **Set a reduced rent of £18,500pa for 5 years to be payable by Flash Musicals directly and through Service Level Agreements subject to the lease conditions outlined below.**

This option would require the identification of the Corporate General Fund to cover payment to Flash Musicals in recognition of the services delivered to Harrow Council by Flash Musicals which would cover the outstanding monies to the HRA of £72,000. The market value of the property is £25,000 pa. For an agreed period of 5 years, the rent may be reduced to reflect Flash Musicals' further capital works to the property which is planned. For example, the property would benefit from a revised fire escape to enable easier disabled access to the property. Flash Musicals have had this costed at £23,500 and additional improvements include improved security shutters and further heating improvements. By Flash Musicals delivering capital improvement to the building and also allowing a number of free events for the Council at the property by agreement with Flash Musicals (such as for staff events), the rent can be revised to £18,500 pa for a 5 year term with a review at five years to open market value.

Flash Musicals have agreed to pay £7,000 towards the rent and the remaining £11,500 will be paid by SLAs for 5 years directly into the HRA account for agreed services to be provided by Flash Musicals (see paragraph 2.2.2 below).

Service delivery would be determined through service level agreements and monitored in the same way that other SLAs with organisations are delivered. This would provide a solution to the current long unresolved situation and would ensure the continued delivery of services in Edgware ward.

2.2.2 Option e) above is recommended as the only option which can deliver Members' requirements to resolve the ongoing situation (which has not been resolved for some years) as follows:

a) That a new 10-year lease is settled with Flash Musicals at the existing premises at a reduced rent of £18,500pa for the first five years. (Flash Musicals currently occupy the building as a secure tenant in line with the Landlord and Tenant Act 1954.)

- That a 10-year lease is granted for the occupancy of the building together with the agreement of service level agreements for the first five years (see c below). The lease is granted on the same full repairing and insuring terms as currently.
- That the rent of £25,000pa is reduced by £6,500pa for the first 5 years to reflect the level of a) capital investment to be made into the building to be no less than £23,500 and the lease is subject to the agreed and scheduled works being carried out b) that the lease obliges Flash Musicals to provide the Council with free access for a number of Council events and activities to be agreed with Flash Musicals (such as tenants association meetings, staff events etc) to a minimum of £1500pa.
- That the rent is subject to an open-market rent review at five years and that service level agreements are subject to review or renewal at five years.
- That the lease contains a break option after the first five years of occupancy whereby either party can give notice to terminate the lease, with no less than 6 months' notice or provisions for termination on a certain date if Harrow wish to gain vacant possession.
- That provision is made for termination of the lease on non-payment of the annual rent or non-delivery of the service level agreement outcomes

Flash Musicals would prefer that a new 25-year lease is settled. In order to achieve external grant funding, community organisations often need to demonstrate security of tenure and a ten year lease is considered a minimum by some funders. In recognition of that the Council is proposing a ten year lease (with a five year break option).

b) That the Council makes payment in recognition of the services delivered by Flash Musicals over the past five years and this is used to settle the outstanding monies owed to the HRA of c £72,000 subject to final verification of services provided.

Flash Musicals have provided evidence of services delivered which include Summer University, Under 1 Sky, New Year's Day Parade, Residents meetings etc. This must be finally verified before any monies can be released.

c) That the rent of £18,500pa is paid as follows:

A reduced rent of £18,500pa has been identified in Option e) above. Flash Musicals have agreed they would be able to meet the annual rent as follows:

- i) Flash Musicals contribution of £7,000pa.
- ii) That Harrow Council's Adult Service commission services from Flash Musicals to the value of £7,000 (payable directly to the HRA). These services to be agreed through a 5 year SLA which could include:
 - To deliver a programme of musical theatre interactions for clients
 - Working with Day Centre staff and clients to provide/participate in master classes for clients at Day Centres
 - To offer Day Centre clients the opportunity to interact/integrate with other communities
 - To enhance the offer through the personalisation agenda for clients to participate in musical theatre activities which offer life enrichment, opportunities for physical activity and contribute to self-esteem, confidence building and mental well-being.
 - Offering Flash Musicals premises to support the programme and offer clients the opportunity to travel outside of Day Centre activities
- iii) That Flash Musicals delivers services to the value of £4,500 to Community & Culture Division (payable directly to the HRA) through a 5-year SLA to support cultural and community events in the borough which could include :
 - Working with the cultural calendar of events providing additional support to community organisations such as the use of PA or staging equipment or content
 - Providing artistic or cultural programming for Under 1 Sky or other Council events such as May Day, Family Fun DAY HAC etc.
 - Offering the Flash Musicals premises for young people (such as the 100% team at HAC) to enhance their skills by undertaking production and performance at alternative venues.
- iv) That the SLAs are monitored in line with the Grant Monitoring processes to ensure quality and cost effectiveness of delivery

2.3 Background

Flash Musicals is a voluntary youth organisation and registered charity. It was established in April 1997 to offer opportunities for children/young people from low-income or disadvantaged families to become involved in the performing arts. Flash Musicals have occupied the Methuen Road building since 2002. In April 2005 it opened its own theatre in Edgware Ward: one of the most deprived areas in Harrow. In 2006, the arrangements for occupation were changed with a full lease being granted in 2009.

In the past, Flash Musicals has been successful in applying for funding through the Council's Main Grants Budget. Flash has also received an annual SLA from Harrow Arts Centre to deliver related activities in the past. In addition, they have delivered services to the Council for Under 1 Sky, the Mayor's float for New Year's Day etc for which they have not to date received payment.

Flash Musicals fully occupy a Housing Revenue Account (HRA) owned community centre in Methuen Road, Edgware (Edgware Ward). The centre has an annual market value rent assessed at £25,000. The lease is a fully repairing and insuring lease.

The Methuen Road property is held within the Council's Housing Revenue Account and as such there are legal constraints on how we may deal with the rental which require the property to be let at the market rental.

Flash have been successful in bidding for Big Lottery funding and have informed the Council that they have made capital improvements to the building in the region of £50,000. In addition Flash has stated that they have made investments in the region of £100,000 from various sources to fund improvements such as the disabled toilet, heating etc

In 2008, Flash Musicals was given a lease for 5 years that expired on 31st March 2013 (although the lease was only granted on 14 January 2009). Flash Musicals are in dispute with the Council due to their belief that the Council promised to grant them Service Level Agreements to cover the payment of rent for each year and that, in their interpretation of the lease, no rent is payable unless a SLA is awarded. The first year's rent was paid with two SLAs of £10,000 and £15,000 respectively awarded to Flash Musicals. Flash Musicals passed that money to the Council to cover the rent as per the agreement. Rent in 2011/12 was settled through payment from the Main Grant awarded to Flash Musicals. Flash Musicals was not successful in the 2012/13 Main Grants round and did not apply for the 2013/14 Outcomes Based Grants.

Flash Musicals asserts that a lease was only signed on the assumption that Service Level Agreements provided by the council would cover rental costs. It is also of the opinion that the rent of £25,000 pa is unrealistic and maintains that the Trustees signed the lease on the understanding that SLAs to cover the rent had been promised as the organisation does not bring in a sufficient amount of revenue to cover this cost. The Council has attempted to resolve this matter over a number of years.

2.4 Current situation

Although the lease granted to Flash Musicals in 2009 expired in March 2013, the lease (Appendix A) comes within the provisions of the Landlord and Tenant Act 1954 (as amended) and so the tenant is currently holding over under the provisions of the Act and thus the terms of the lease remain in existence and are enforceable.

The Local Government and Housing Act 1989 (section 74) outlines the statutory use of the HRA. The statute prescribes that the Council is not

permitted to fund any expenditure for non-housing related services from this account. Therefore any rents levied are owed to the HRA and the current deficit stands at £72,000 (as at 28th September 2013). The ongoing dispute with Flash Musicals has not been resolved with the risk of the outstanding monies increasing.

With a view to resolving this matter, Harrow Council officers have met with Flash Musicals on a number of occasions and have received information and assurances regarding Flash Musicals' financial position and reserves, client demographics (96% Harrow residents) and the level of services previously delivered to the Council which have not been reimbursed to Flash Musicals.

2.5 Why a change is needed

Members have required officers to identify a resolution to the current situation which ensures a sustainable future for the organisation and which regularises the lease arrangements, settles the outstanding monies owing to the HRA and minimises further financial risk to the Council.

2.6 Implications of the Recommendation

Considerations

2.6.1 Resources, costs and risks

The recommendations would require the Council to reimburse Flash Musicals to the value of the outstanding monies to the HRA from its General Fund. There is no departmental budget to cover this and it would require the Council to use contingency reserves.

There is a risk that other community organisations may feel that Flash Musicals is receiving preferential treatment. This risk may be mitigated by the Service Level Agreements which will require the delivery of services for the Council for which the Council would normally make payment to an organisation and which in this case will be used to offset the rent. The delivery of the service level agreements will need to be monitored to ensure that outcomes are delivered, in line with monitoring arrangements for other voluntary sector SLAs.

2.6.2 Staffing/workforce

Property Service officers will have an ongoing responsibility to monitor the lease and any rent reviews etc. Adult Services and Community Sector Services will be required to monitor the delivery of the SLAs on an annual basis.

2.6.3 Equalities impact

Flash Musicals is delivering services in Edgware Ward where 31% of the population are in multiple deprivation according to the 2011 Census data. 20% of the local residents are under 17 years old and 56% are non UK born. Their target age group is young people but they also run activities for older people. Although based in Edgware where most of the activities take place, Flash Musicals also delivers services at other venues across the borough, for example supporting Harrow Arts Centre, at Under 1 Sky etc.

2.6.4 Community safety

Flash Musicals is a third party reporting site for Hate Crime incidents. If the organisation no longer delivered services, there would be no other local site.

2.7 Legal Implications

In 2009 a lease was granted to Flash Musicals for the occupation of the community premises in Methuen Road Edgware for a term of 5 years from 1st April 2008 that expired on 31st March 2013. The lease is not excluded from the Landlord and Tenant Act 1954 ('1954 Act'). The tenant is currently holding over under the provisions of the 1954 Act and the terms of the lease remain in existence and are enforceable.

The council may seek recovery of any arrears by way of a debt action against Flash Musicals, by distraining against the premises (i.e. sending in bailiffs) and/or by seeking forfeiture of Flash Musical's lease (provided the council has not waived its right to forfeit). The council's legal remedies are of limited utility if Flash Musicals does not have the means to satisfy a court judgment.

The Local Government and Housing Act 1989 (section 74) outlines the statutory use of the HRA. The statute prescribes that the Council is not permitted to fund any expenditure for non-housing related services from this account.

Financial Implications

The recommendation would impact on the Council's total General Fund and contingency reserves. The current amount owing to the HRA is £72,000 and the current ongoing rent pa is £25,000. If the current situation is not resolved, the monies owing are likely to increase and expose the Council to further costs.

The release of Corporate General Fund to cover the delivery of services by Flash Musicals to Harrow Council over the period of the current lease is contingent upon final verification of those figures.

The delivery of SLAs will impact on the revenue budgets of Community Sector Services and Adult Services and there is no current revenue budget provision for the ongoing local authority contribution towards services being delivered. This will now need to be identified.

Performance Issues

Delivery of specified outcomes will be contained within the Service Level Agreements and will be against the following Council outcomes:

- Harrow residents are able to lead, independent and fulfilling lives
- Harrow residents are helped to overcome poverty, worklessness and homelessness
- Harrow residents participate in art, sport, leisure and cultural activity

Performance will be monitored in line with the monitoring arrangements currently in place for all voluntary and community organisations (ie 6 monthly and annually).

Environmental Impact

There are no environmental impacts.

Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

i) Risk of monies outstanding to the HRA. If the Council does not reach a solution to the current situation then the amount of monies owing is likely to increase. The proposals outlined in this report aim to reduce this risk and prevent the situation from recurring in the future.

ii) There is a risk that other community organisations may feel that Flash Musicals is receiving preferential treatment. This risk may be mitigated by the Service Level Agreements which will require the delivery of services for the Council for which the Council would normally make payment to an organisation and which in this case will be used to offset the rent.

Equalities implications

Was an Equality Impact Assessment carried out? A draft EQIA is in place.

The draft EQIA identifies a potential negative impact for older people and younger people in Edgware Ward if the services of Flash Musicals are not available.

Corporate Priorities

Please identify which corporate priority the report incorporates and how:

- United and involved communities: A Council that listens and leads.
- Supporting and protecting people who are most in need.

Section 3 - Statutory Officer Clearance

Signature:

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Name: Simon George

Date: 13 September 2013

Signature:

.....

Name: Jessica Farmer

on behalf of the
Monitoring Officer

Date: 13 September 2013

*

Section 4 – Performance Officer Clearance

Signature:

Name Alex Dewsnap

Divisional Director
Strategic
Commissioning

Date: 11 September 2013

*

Section 5 – Environmental Impact Officer Clearance

Name: Philip Loveland Cooper

on behalf of the
Corporate Director
(Environment &
Enterprise)

Date: 13 September 2013

Section 6 - Contact Details and Background Papers

Contact: Marianne Locke, Divisional Director Community & Culture 020 8736 6530

Background Papers:

Part 2: Lease to Flash Musicals 2009. Exempt not for publication by virtue of Category 3 of Schedule 12A of Part 1 of the Local Government Act 1972 (as amended).

Signature:

Position *Corporate Director of Environment and Enterprise*
Corporate Director of Community, Health and Wellbeing

Name (print)

Date: 16 September 2013

For Portfolio Holder

* I do agree to the decision proposed

* I do not agree to the decision proposed

** Please delete as appropriate*

Notification of disclosable non-pecuniary and pecuniary interests, any conflict of interest or dispensation granted by the Head of Paid Service(if any):

[Should you have a Disclosable Pecuniary Interest, you should not take this decision.]

Additional comments made by and/or options considered by the Portfolio Holder

Signature:

Portfolio Holder

Date:

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

*[Call-in will apply once the decision
notice is issued]*