
REPORT FOR: CABINET

Date of Meeting: 8 December 2016

Subject: Future Delivery of Arts and Heritage Services: Update and approval of lease length

Key Decision: Yes

Responsible Officer: Tom McCourt, Corporate Director of Community

Portfolio Holder: Councillor Sue Anderson, Portfolio Holder Community, Culture and Resident Engagement
Councillor Keith Ferry, Deputy Leader of the Council and Portfolio Holder for Business, Planning and Regeneration

Exempt: No

Decision subject to Call-in: Yes

Wards affected: All

Enclosures: None

Section 1 – Summary and Recommendations

This report offers an update on the transfer of the delivery of the Council's arts and heritage services at Harrow Arts Centre, Harrow Schools Music Service and Harrow Museum at Headstone Manor to a charitable trust (Cultura London) and seeks further approval for the leasing of Harrow Arts Centre and Headstone Manor for a revised period of 90 years (or other reasonable term as agreed) as outlined in the report.

Recommendations:

Cabinet is requested to:

- i) Note the progress in the transfer of arts and heritage services to Cultura London as outlined in the Cabinet report and appendices of January 2016 (The Future Delivery of Arts and Heritage Services).
<http://www.harrow.gov.uk/www2/ieListDocuments.aspx?CId=249&MId=62802&Ver=4>
- ii) Approve the amendment of the decision to grant leases to Cultura London of such Council properties as the charity may occupy for the purpose of the performance of the services from a period of 25 years to a revised period of 90 years (or other reasonable term to be agreed) at a peppercorn rent for Headstone Manor and Harrow Museum buildings and a rent as indicated in paragraph 4.1 Option B for Harrow Arts Centre site.
- iii) Authorise the Corporate Director of Community, following consultation with the Portfolio Holder for Community, Culture and Resident Engagement, the Deputy Leader and Portfolio Holder for Business, Planning and Regeneration, the Director of Legal and Governance Services and the Director of Finance to:
 - agree the final heads of terms with Cultura London, acting in the best interests of the council
 - enter into the leases and associated documents and take all other necessary actions to complete the transfer of services to Cultura London to take effect as soon as possible following conclusion of the required legal agreements.

Reason: (For recommendations)

In January 2016, Cabinet approved the transfer of the delivery of arts and heritage services at Harrow Arts Centre, Harrow Museum and Harrow Schools Music Service to an independent charitable trust, Cultura London. This report updates on progress of the transfer and seeks approval for the leasing of buildings at Harrow Arts Centre and Headstone Manor/Harrow Museum for a revised period of 90 years (or other reasonable term to be agreed) to the Charitable Trust to ensure the sustainable delivery of cultural services in Harrow whilst delivering savings for the Medium Term Financial Strategy.

Section 2 – Report

1. Introductory paragraph

Harrow Council is faced with £83million reduction in its funding over the next three years and as a result is having to make very difficult decisions for all services and in particular the future subsidy of non-statutory services such as arts and culture. The Council is adopting an innovative approach in securing a future for those services which it can no longer fund directly, by seeking alternative delivery models to ensure a sustainable future for services which provide wide-ranging health and wellbeing benefits and are valued by the community in Harrow. In January 2016, the Cabinet approved the transfer of the delivery of arts and heritage services at Harrow Arts Centre, Harrow Museum and Harrow Schools Music Service to the independent charitable Trust, Cultural London and the leasing of relevant buildings/site as required for a period of 25 years. This report updates Members on progress and seeks approval for the leasing of the relevant buildings to the trust for a revised period of 90 years (or other term as agreed) for the reasons outlined in the report

2. Background

2.1 In January 2016, the Cabinet approved the transfer of the delivery of its arts and heritage services to an independent charitable trust Cultura London. The services are:

- i) Harrow Arts Centre (HAC): delivering professional performance, events and community arts activity from a range of buildings in Hatch End centred on the Grade 2 listed Elliott Hall (former school building).
- ii) Harrow Schools Music Service: c70 teachers directly deliver 700 hours of instrumental tuition every week through SLAs with schools
- iii) Harrow Museum (at Headstone Manor) providing the management and development of the historic Headstone Manor site, including museum learning, participation & cultural programmes, and public access to the Local History collection.

2.2 Cabinet approved the transfer on the following terms:

- i) The transfer of Council arts and heritage services and assets as appropriate to a charitable trust (Cultura London) on 4th April 2016 (or other specified date) under an agreement for a period of 25 years.
- ii) Approve the decision to grant leases to Cultura London of such Council properties as the charity may occupy for the purpose of the performance of the services for a period of 25 years at a peppercorn rent.

2.3 The Corporate Director of Community Services and the Director of Finance following consultation with relevant Portfolio Holders were authorised:

- To draft the Heads of Terms for those leases between the Council and Cultura London, for the delivery of Council arts and heritage services to Cultura London, having due regard to the best interests of the Council and subject to a full satisfactory title investigation being undertaken of the Harrow Arts Centre and Headstone Manor sites.
- Conclude and give final approval to sign the lease(s) and Heads of Terms and/or the final Service Level Agreement for the provision of services as outlined in the body of the report
- Novate any existing contracts for the supply of services to Cultura London
- Enter into further discussions with Cultura London as required to allow for mobilisation and a start date of 4th April 2016 (or other specified date).
- Provide a revenue subsidy of £396k for 2016-17 together with a one-off amount of £35k for implementation costs – a total of £431k - and thereafter of £60k per annum from 2017-18 (in relation to the Harrow Museum) to 31st March 2021,
- To authorise a loan of up to £1m for Cultura London for the delivery of physical improvements to Harrow Arts Centre at a fixed cost. If 90% of the identified capital fundraising has not been realised by July 2016, then the project will be paused for the Council to review its position. In July 2016, Cabinet approved that the £1million would be a grant to Cultura London.

2.3 Cultura London was incorporated on 13th August 2015 as a private company limited by guarantee company number: 9731998. The company is registered with the Charity Commission and has a bank account. A Chief Executive and other officers have been appointed for the charity.

3. Current situation

3.1 Since January 2016, officers have been engaged in carrying out due diligence on the transfer arrangements with Cultura to ensure that the conditions of transfer produce the required outcome for a sustainable future for the arts and heritage services. Contract novation, Museum Collection transfer, TUPE, the supply of services, insurances etc have been actioned or prepared in readiness for the transfer; and draft transfer and funding agreements are ready for finalisation. However, two key issues to be resolved were identified which have led to delays on the proposed transfer date of 1st April 2016. Therefore the services have remained in house and the Council has continued to deliver the services, with the net costs borne by the Council until such time as a transfer can be completed.

3.2 In order to address the first of the key issues, in June 2016, Cabinet approved that the £1m loan in the capital programme for 2016/17 to be provided to Cultura London (towards the £3.8m cost of a new extension to the Elliott Hall to replace the existing annex and provide a cinema at the Arts Centre) be replaced with a £1m capital grant for the same purpose. This will have no net effect on the Capital Programme and the revenue implications will be covered within the MTFS. Under the terms of the capital grant agreement (Appendix 4), it is proposed that this funding is only to be released as follows:

- Subject to confirmation by the Charity that adequate match funding has been awarded to it for the Project accompanied by evidence of the

confirmed match funding from each funder and a Project plan with an implementation timetable

- Monthly reimbursement of monies on receipt of expenditure receipts from the Charity based on an equal % split between all funders of the total expenditure receipts each month.
- The amount of the Grant shall not be increased in the event of any overspend by the Charity in its delivery of the Project.

3.2 Cultura have also secured £600k from the Arts Impact Fund, subject to finalisation of their legal agreements and the transfer agreement between the Council and the charity; and a further £2.5million capital loan from John Lyons Charity for the delivery of Phase 1 of the draft Master Plan for the site which will be the delivery of a new block to include bookable spaces and a two screen independent cinema. Both funders have indicated that they would require a longer lease to be in place. *Cultura London* have therefore identified that they cannot complete the transfer of services on the basis of a 25 year lease and agreement. This report proposes an amendment to the approvals made by Cabinet in January.

3.3 The Charity has been actively fundraising with the general public and with individuals and has achieved an additional c£60k through this campaign, which has attracted celebrity endorsements to support the case. In addition, the charity secured £150k transition fund in 2015-16 from the Arts Council to support the transfer.

3.4 The Great Barn at Harrow Museum has fully opened as a venue for weddings and functions and has exceeded the target for the number of paid deposit bookings for 2016/17 and is booking well into 2017-18. The Harrow Museum project has attracted a number of additional funds in addition to the Heritage Lottery Grant of £3.5 million, for example from the Country Houses Foundation, The Arts Council and the John Lyons Charity, to support the delivery of the masterplan but have been advised by funders that some of these are subject to the Museum transferring to a charity, outside of the Council.

4. Options considered

4.1 The following options are offered for Cabinet consideration:

Option A: Retention of all arts and heritage services by Harrow Council.

If the Council is not able to be flexible on the length of lease and transfer agreement proposed, Cultura London has notified officers that the charity would be unable to proceed with the transfer as external funding streams would not be available to them. As these are discretionary services, the Council is not required to provide them and within the current envelope of the MTFS (as outlined in February 2015 and December 2015), there would be no revenue to continue to subsidise these services at current levels now and from 2017-18, apart from the £60k pa identified within the budget for Harrow Museum. Therefore there would be risk to the continuing operation of services and any external funding could be lost or would have to be repaid (for example in the case of Heritage Lottery funding if the Museum were to close). In addition, the Council's existing capital investment in Harrow Museum could be jeopardised or would need to be increased to meet the HLF requirements if

the Museum is not a charitable organisation, as approved external match-funding awards (such as John Lyons Charity) are predicated on charitable status for the Museum. Costs for closure of services were identified to Cabinet in January 2016.

This is not recommended.

Option B: To revise the terms of the transfer agreement and lease to transfer Council arts and heritage services delivery to Cultura London through a management agreement for a maximum period of 90 years (or other term as agreed) specifically:

- Harrow Arts Centre
- Harrow Music Service
- Harrow Museum and Headstone Manor

The aim of this option would be to enable the charity to function with a reduced Council subsidy as identified in the Cabinet reports of January 2016 and May 2015. The charity would operate from Council premises under lease and all property and other assets would remain under the ownership of Harrow Council.

It is proposed that the lease period runs concurrently with the period of the agreement (a maximum of 90 years) which will enable the charity to establish its business delivery and source external funding to support the services. Most funders require a reasonable period of security of tenure as part of the funding eligibility. The indicative draft Heads of Terms (subject to final agreement with Cultura and any necessary amendments authorised by the Corporate Director acting in the best interests of the Council) are as follows:

Harrow Arts Centre (HAC). There will be 2 headleases granted:

Headlease 1 (Main HAC Site)

- Term – 90 years. Lease to be outside of the 1954 Act. Landlord's rights reserved.
- Break – To be confirmed. Automatic termination on breach by the Trust of the Transfer Agreement or Funding Agreement or on insolvency event subject to the reasonable requirements of funders.
- Rent – £11,363.64 pa, being £1 million divided by 90 years (but rent free for years 1 and 2, 50% rent for years 3 and 4). Rent review – RPI linked, 5 yearly from date of lease, upwards only. The rent may change depending upon the term of lease finally agreed.
- Outgoings and insurance payable.
- Full repair, maintenance and decoration obligation (including all new buildings erected by the Tenant during the term), except for the roof of Elliot Hall which The Council will repair/maintain until such time as it has been repaired.
- Lease to permit Tenant to undertake structural alterations or new development, subject to Landlord's consent (not to be unreasonably withheld or delayed) and other required consents (e.g. planning, English Heritage etc).
- Landlord's consent required for any planning application provided that such consent shall not be unreasonably withheld or delayed in respect of a

scheme which in accordance with the proposed developments outlined in the agreed masterplan and which in the council's opinion (acting reasonably) does not adversely affect the Council's future ability to develop the council's retained land.

- Lease to prohibit Tenant from objecting to any planning application of the Landlord to redevelop the Landlord's retained land.
- Landlord's rights reserved:
 - rights of long leaseholders (eg medical centre) to use parking spaces.
 - right to run service media under the demised land
 - right to use facilities for free for events up to a maximum of 4 times per annum with 3 months' notice by Harrow Council and the Council paying all incidental costs.
 - right to access demised land if required during any redevelopment or maintenance of neighbouring land/buildings owned by the landlord
 - right to use the facilities as an emergency rest centre and potential election count centre. Council to reimburse Cultura for costs incurred.

Headlease 2 (Part of the George Moore Building)

A headlease of part of George Moore Building as follows: (1) all of the ground floor premises known as 161 Uxbridge Road (the main offices), and (2) the first floor flat known as 163 Uxbridge Road (otherwise known as the music office). In respect of 161 Uxbridge Road it is proposed that Cultura will become the lessee subject to the occupational licence to the Srishti Dance Academy and Cultura will be entitled to receipt of the licence fee and a licence fee authority letter will be sent to Srishti on completion.

This lease will enable the Trust to have office space to operate from.

- Term – 90 years
- Break – mutual break at any time on 6 months' notice.
- Rent – Peppercorn
- Outgoings and insurance payable by Cultura. Landlord insures.
- 1954 Act – Outside
- Internal repair/decoration only
- Automatic termination – on breach by the Trust of the Transfer Agreement or Funding Agreement, or insolvency event subject to the reasonable requirements of funders.

Headstone Manor

- Term – 90 years
- Break – To be agreed. Automatic termination on breach by the Trust of the Transfer Agreement or Funding Agreement or insolvency event subject to the reasonable requirements of funders .
- Rent – Peppercorn
- Outgoings and insurance payable by Cultura. Cultura insures.
- Full repair/maintenance/decoration obligation.
- 1954 Act – Outside
- Landlord's rights reserved - right to use facilities for free for events up to a maximum of 2 times per annum with 3 months' notice by Harrow Council and the Council paying all incidental costs.

- Car park included, but rights of access and parking reserved to the Council (eg for parks vehicles) and for those parties authorised by the Council from time to time (e.g. members of the public, park users)
- Private road included and Trust obliged to maintain it. Rights of access and parking reserved to those parties authorised by the Council from time to time (e.g. members of the public, park users)

Cabinet is requested to approve this option.

5. Implications of the Recommendation

Considerations

5.1 Resources, costs

Due to the delay in the transfer, the Council has incurred additional one-off costs such as legal fees, HR support etc. of circa £100k which are being reported as forecast overspend as part of the monthly budget monitoring process. In terms of running costs of the service, this is estimated at a net cost of c £70k for each month of delay.

The capital grant funding has been identified and included in the Council's Capital Programme.

5.2 Assets and Property

The freehold, and (where applicable) head leasehold, ownership of the properties involved (both Harrow Arts Centre and Harrow Museum) will remain with the Council. However, the new provider will have a lease to operate from the Council's facilities for the duration of that lease. Members are asked to approve leases of 90 years duration (or such other reasonable term as agreed) to allow the new charity to fundraise through grant applications. Most external funders require this kind of tenure length of term to secure for major capital investment.

A Section 123 report has been commissioned from independent valuers to ensure that the Council is compliant with its responsibilities under the Local Government Act 1972. The report does not identify any issues with the proposals.

5.3 Staffing/workforce

TUPE arrangements are being made in preparation for the proposed transfer of staff. Trade Unions and staff have been kept informed about the delay to transfer.

5.4 Contractual impact

Contract novation letters have been sent to the major contractors and funders for the Arts Centre and Museum sites. Facilities Management and ICT contractors have been notified of the proposed impending changes.

6. Risk Management Implications

Risk included on Directorate risk register? Yes

Separate risk register in place? Yes

6.1 A full risk register is in place for this project. Key risks and mitigation are as follows:

- i) The Charity fails to deliver its business plan and becomes insolvent or is in breach of its Funding and Transfer Agreements with Harrow Council.

Mitigation

Industry experts have been consulted across a number of areas within the Business Plan. Their advice has been used to set the income targets and the validity and feasibility of the plan itself. The business plan has been reviewed by Finance and tested for sensitivities. In the case of failure to deliver or insolvency, the properties shall return to Harrow Council subject to any alternative arrangements agreed with Cultura's funders.

- ii) Funding for Capital Development is not achieved.

Mitigation

Fundraising has already started with a social media publicity campaign and town centre awareness-raising sessions around the borough. The Council has now approved a capital grant of £1 million for this project subject to the provisions as outlined in paragraph 3.2. Further funding streams have been approved for the Charity by Arts Impact Fund and John Lyons Charity, totalling £3.1million. The recommendation for a longer lease contained within this report should enable this funding to be accessed. Harrow Council will only release its capital grant on commencement of the delivery project, in tranches as outlined in paragraph 3.2

- iii) The planning application for the Master Plan is not approved.

Mitigation

The Architect has produced a revised Masterplan which is currently in pre-planning discussions with the Planning team. Alternative service delivery models can be adopted for the first year of operation to deliver a reduced offer to allow for re-phasing, planning processes etc. such as temporary locations for cinema functions.

- viii) Fluctuations in build costs – need to recognise that costs may go up as well as down and that much of this risk is outside the control of the council.

Mitigation

A QS has been commissioned and due diligence will be carried out prior to any capital project commencing. The charity will have to consider the affordability of its project based on the QS assumptions.

7. Legal Implications

7.1 The council has discretionary powers to provide arts, heritage and music services. The council can choose to provide all or any of these services through contractual arrangements with any third party provider, including Trusts or Non-profit distributing organisations (NPDOs.).

7.2 There are a number of legal powers that support the proposal for moving arts and heritage services provision to an external provider, as follows:

a) Section 19 (1) of the Local Government (Miscellaneous Provisions) Act 1976: local authorities have power to provide such recreational facilities as they think fit and they also have power to enter into a contract with another person in connection with the provision of those facilities under section 1 of The Local Government (Contracts) Act 1997 and section 1 of the Localism Act 2011.

b) General power of competence: Section 1 of the Localism Act 2011 gives the Council power to do anything individuals may do and this includes entering into contracts for services and leasing arrangements.

c) Power to grant leases or licenses: The Council has the power to dispose of property under s123 of the Local Government 1972 Act. This is subject to an obligation to obtain the best consideration that can reasonably be obtained (except for leases of seven years or less) unless the Secretary of State's consent is obtained for the disposal whether by means of a general consent or otherwise. Consent is deemed to be given, provided that the undervalue does not exceed two million pounds, where the Council considers that the purpose for which the land is to be disposed of is likely to contribute towards one or more of the objects in respect of the whole or part of the Council's local area or of all or any persons resident or present in its area as set out at Circular 06/03: Local Government Act 1972 (General Disposal Consent (England) 2003 paragraph 2, being the promotion or improvement of economic, social or environmental well-being . If the undervalue exceeds 2 million pounds then an application for express Secretary of State Consent will need to be made.

7.3 Legal issues to be finalised in the Service Level Agreement and transfer documents include:

- Back office service agreement – the new Trust could consider buying back certain services from the Council, perhaps for a transitional period (for example, payroll, HR and/or IT). This arrangement would be set out in a back office service agreement. Local authority provision of support services can sometimes result in hidden subsidies, giving rise to State Aid issues. The business case for Cultura London does not indicate the need for back office service agreements.

- Contracts/grants – that will transfer from the Council to the Trust and whether these can be transferred to the new entity or if the consent of the other parties is required. The Heritage Lottery Fund has indicated in principle that the HLF Round 2 grant of £3.6 million for Headstone Manor can be transferred to the new charity for delivery. ;

- Staff– who are the PAYE employees of the Council and who will transfer to the new Trust under TUPE;

- Pension provision for staff – and the extent to which the new Trust will be required to match the pension provision of the transferring staff;

- Freehold or leasehold land or other property arrangements – that will transfer or be leased to the new Trust – see further below.

- Other assets of the Service – including the physical assets, intellectual property (such as publications and branding, etc.) and funding commitments;

- Liabilities of the Service – such as debts, disputes with employees and third parties, reputational issues, loans, etc.

7.4 Section 123(2) of the Local Government Act 1972 ("1972 Act") states that a Council may not (except with without ministerial consent) dispose of land at

less than the best consideration that can reasonably be obtained (other than disposals of leases 7 years or less). The current proposal would involve leases longer than 7 years and gives rise to a disposal/s at less than best consideration given that the rent reserved for some properties will be a nominal peppercorn. Accordingly, Secretary of State consent would be required, unless the General Disposal Consent 2003 applies. This gives a blanket consent where the undervalue is less than £2m and the disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of the Borough. Cabinet will need to be satisfied that those criteria will be met by the proposed arrangements and that there are no title issues following the completion of property due diligence that impact or may impact on the proposal.

7.5 Notwithstanding that the General Disposal Consent 2003 may apply, when disposing of land at an undervalue, the Council should remain aware of the need to fulfil its fiduciary duty in a way which is accountable to local people.

8. Financial Implications

8.1 The 15/16 MTFS agreed that the Arts & Heritage service could no longer be subsidised, and an alternative delivery model identified savings of £455k. A revision to the savings was made in the 16/17 MTFS to take into account the timescale of delivering the business plan and the match funding requirement of £60k for 5 years as part of the HLF funding bid. As a result, the savings had been re-profiled as £173k in 16/17 and £282k in 17/18 respectively.

8.2 It will not be possible to deliver in full the 2016-17 saving owing to the delay in transfer and subsequent costs of delivering service in house as well as additional fees incurred. The net costs of running the service in-house are currently estimated at around £70k per month. Additionally, there are one-off implementation costs in relation to Legal and HR support. Invoices received to date (since April 16) amount to approximately £100k, however further costs are expected leading up to the transfer date. It should also be noted that, despite the delay, the revenue subsidy to be provided to Cultura London in 16/17 remains at £431k. The forecast overspend is being closely monitored and reported as part of budget monitoring.

8.3 The capital grant of £1million has been approved by Cabinet in June 2016 and included within the Council's capital programme. A further application for capital will be made as part of the Council's budget setting process for 2017-18, to address the repair of the roof of the Elliott Hall with an estimate cost of £1.6m. This will be subject to a separate approval by Cabinet and then Council in February 2017.

8.4 The proposed change to the period of the lease from 25 years to a maximum of 90 years will attract an annual rent income of £11k payable by Cultura London (rent free for years 1 & 2, followed by 50% rent for years 3 & 4, and then full rent thereafter with a rent review every 5 years). This can be used to partially offset capital financing costs associated with the capital requirements mentioned in paragraph 8.3.

9. Equalities implications / Public Sector Equality Duty

A full EQIA was completed for the Cabinet report of January 2016. Nothing within this report changes the impacts and mitigations identified as the proposals seek to ensure the long term sustainability of the arts and heritage services.

10. Council Priorities

The proposal delivers the Council's vision as follows:

Working Together to Make a Difference for Harrow

- Making a difference for the vulnerable by continuing to offer arts and heritage events and activities to support mental and physical health and wellbeing, particularly for older people, young people and those with learning difficulties.
- Making a difference for communities by offering a wide range of events and activities to reach different communities in the borough and to ensure a rich mix of cultural offer to support residential regeneration.
- Making a difference for families by offering cultural events and activities for all ages and to support educational attainment e.g. music tuition, 100% Producers, Family Fun Days etc.

Section 3 - Statutory Officer Clearance

Name: Jessie Mann	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 16 November 2016		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 16 November 2016		

Ward Councillors notified:	NO, as it impacts on all Wards
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EqIA carried out:

No. The EQIA for January 2016 Cabinet report covers the proposals in this report.

EqIA cleared by:

N/A

Section 4 - Contact Details and Background Papers

Contact: Simon Baxter, Divisional Director Environment & Culture Tel: 02084168675
simon.baxter@harrow.gov.uk

Background Papers:

Cabinet Report and decision January 2016: Future Delivery of Arts & Heritage Services,

<http://www.harrow.gov.uk/www2/mgAi.aspx?ID=98292>

Cabinet report and decision June 2016: Revenue and Capital Outturn 2015-16,

<http://www.harrow.gov.uk/www2/ieDecisionDetails.aspx?AllId=99877>

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

NOT APPLICABLE

[Call-in applies]