

TELFORD & WREKIN COUNCIL

CABINET - 26 JUNE 2014

UPDATE ON DAWLEY SOCIAL & MEMORIAL CLUB, KING STREET, DAWLEY

REPORT OF THE ASSISTANT DIRECTOR: DEVELOPMENT, BUSINESS & EMPLOYMENT

LEAD CABINET MEMBER: CLLR BILL McCLEMENTS

PART A – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

1.1 The report provides an update to the Cabinet Report dated 20 September 2012 and seeks further approvals in relation to the refurbishment and ultimate disposal of Dawley Social & Memorial Club (The Club).

2.0 RECOMMENDATIONS

2.1 That Cabinet grant delegated authority to the Assistant Director: Development, Business & Employment, in consultation with the Cabinet Member for Finance and Enterprise to implement the proposals outlined in Section 4.5 of this report.

2.2 That Cabinet grant delegated authority to the Assistant Director: Law, Democracy & Peoples Services to agree and execute all necessary documentation to give effect to the proposals contained within this report.

3.0 SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Priority Plan objective(s)?	
	Yes	The Club has been established in Dawley since around 1930. The building provides a focal point for the community and provides a meeting place for local clubs. It also provides accommodation from which valuable Council Services are delivered including Job Junctions, which provide community based support for those seeking employment and training. It is one of the most well attended Job Junctions in the Borough with over 80 people attending twice a week, many of which are supported into employment. As such The Club contributes to a range of Council priorities but directly towards: <ul style="list-style-type: none"> Improving local people's prospects through education and skills training The proposals outlined within this report seek to safeguard this valuable community asset and as such the delivery of community based activity and services.
	Will the proposals impact on specific groups of people?	
	Yes	The proposals will benefit residents within the local community but also for visitors from outside of the Borough.
TARGET COMPLETION/ DELIVERY DATE	Subject to approval, refurbishment works will be completed by October/November 2014.	
FINANCIAL/ VALUE FOR	Yes	All proposals within this report are subject to Great Dawley Town Council agreeing to act as guarantor to this agreement and therefore

<p>MONEY IMPACT</p>		<p>underwriting the ability of The Club to generate sufficient income to meet its liability to the Council in respect of rental payments and to carry out its obligations for insurance, ongoing maintenance and future repairs of the building throughout the 16 years of the agreement. In the event that Dawley Social Club default and do not make the required payments, the annual rental payments due to the Council will be recoverable from Great Dawley Town Council, the Town Council would then take possession of the building and continue to use it as a community building.</p> <p>The proposed repairs to the building, including fees, will cost £195,650 and these works will be funded from available capital within the Property Investment Portfolio (PIP). These costs and interest at 4.5% pa will be included in the annual rental payment over a 16 year period. Further details are contained within sections 4.5 to 4.9 of the report. All rental payments quoted in this report are net of VAT. VAT will be chargeable.</p> <p>As specified in paragraph 4.8, building contractors have mobilised on site under a licence at their own risk. It is understood that Great Dawley Town Council will consider the requirement to act as guarantor at their meeting on 15 July 2014. Therefore, any costs of building refurbishment works incurred by Telford and Wrekin Council before the guarantee is in place, over and above the £31,000 received by Dawley Social Club as a one off upfront payment under the terms of the agreement, will be at risk.</p> <p>If, at their meeting in July, the Town Council does not agree to act as guarantor to this agreement, Telford and Wrekin Council will be contractually committed to pay the contractor for the repair works – the full costs of £179,500.</p> <p>There are further financial risks associated with the proposal as detailed in the Risk Assessment at section 5.</p> <p>JAC 250614</p>
<p>LEGAL ISSUES</p>	<p>Yes</p>	<p>The land was acquired in 1928 by the Council's predecessor and the conveyance places an obligation on the Council to keep the building in repair. The building is subject to a restrictive covenant (as outlined below) which restricts the use of the site and therefore the value of the site and options on its future. The conditional contract for the sale of the land is for a value agreed as valid by the District Valuer (based on the building being transferred to The Club and taking into account the marriage value of their leasehold and the Council's freehold interest) and so constitutes best consideration in the circumstances and allows the land to be disposed of as proposed.</p> <p>The legal documentation will be drafted to ensure that the Council's position is protected vis a vis future repairing and insuring obligations and payment of the rent but, given the premium for the lease, as described below the risk is shared with The Club. Great Dawley Town Council will meet on 15 July 2014 to consider acting as guarantor for the Club. If that is the case then the Great Dawley Town Council will be a party to the leasing arrangement in their capacity as guarantor and due diligence will be carried out into their financial stability before they are accepted as guarantor.</p> <p>An application to register the car park area of the land (as coloured blue on the plan to the September 2012 Cabinet report) to the Council failed. This land would need to be transferred on the basis of "as far</p>

		as we are able". The Club could be challenged as to ownership in the future; however, that is their risk and they would have to seek independent legal advice on this.
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	Risks and associated mitigating actions are dealt with in Section 5 of the report.
IMPACT ON SPECIFIC WARDS	Yes	The site is located on the Dawley Magna Ward.

PART B – ADDITIONAL INFORMATION

4.0 INFORMATION

- 4.1 The Club has been a key component of the Dawley community for many years. Founded around 1930 in a former hall gifted to the community, it has gradually been extended and currently provides a base for a range of social functions and community services. It currently has around 600 members, primarily from Dawley and the surrounding area.
- 4.2 The building is currently held in the PIP under a 20 year lease, which commenced in August 2010. In early 2012 the roof over the hall collapsed causing significant damage and undermining The Club’s ability to generate income. In response to this in September 2012, Cabinet approved a recommendation to dispose of the property to The Club for £21,000 on the basis that the Council could not justify further investment in the property and that The Club could seek funding, having acquired the freehold. The property value was determined following an independent valuation, undertaken in June 2012.
- 4.3 Since then volunteers at The Club have reorganised governance, staffing and operation to improve viability and have been pursuing funding to repair the damaged roof. Despite this, The Club have been unable to raise funds, with possible funders being concerned about their ability to secure the loan through the property, with one of the key factors being the restrictive covenant which requires the land to be held on trust “for the benefit of the inhabitants of the said District [of Dawley] in perpetuity”. The restrictive covenant directly impacts on the value of the property with redevelopment being virtually impossible without first seeking to lift the restrictive covenant, which would ultimately have a cost. It is therefore unlikely that a regular investor would see this as an attractive proposition
- 4.4 Over this period, The Club has continued to pay rent of £2,000 per annum but this leaves little money to invest in the repair and refurbishment of the building so as to maximise its use and potential. The Club is ultimately in breach of the terms of the lease in not meeting its repairing obligations but terminating the lease / seeking another lessee is not an attractive option to either party on the basis that:
- The Club support the use of the building as an important community asset from which community groups’ function and Council services are delivered (e.g. Job Junctions).
 - Volunteers at the club have worked hard to improve viability through reorganisation and have developed a business plan, identifying income generation opportunities which could be realised if the hall was brought back into use.
 - The PIP would be left with a property which they would struggle to let in its current state of repair, meaning the building would represent an ongoing liability for the council and a derelict, and increasingly dilapidated building which would cost more to repair in the longer term.

4.5 In this context, The Club approached the Council as landlord to see if they would consider undertaking refurbishment works on the back of an enhanced rent, payable by The Club to the Council, with the freehold of the building and associated site (shown edged red and blue in Appendix A) passing to The Club upon repayment of the refurbishment works: The following terms have been discussed and agreed in principal:

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- The Council procure a contractor to undertake repairs to the roof, walls and floor at a tendered cost of £179,500. The Club will also make a payment of £16,150 to the council as a fee for designing, specifying, procuring and overseeing the works which will be recoverable through the rental payments in the lease.
- Concurrent with the award of contract, The Club enters into a new lease with the Council for 16 years. There will be a guarantor (subject to approval on 15 July 2014) who will also be a party to the lease.
- The Club pay a one off rental premium of £10,000 (excluding VAT) upon entering into the lease, plus rent which will be set to recover the costs of refurbishment works plus interest over the term of the lease.
- If at any time The Club default on payments due under the lease, and attempts to recover outstanding sums from the guarantor are not successful, then the property would revert, in its improved state, to the Council.

AGREEMENT FOR SALE

- At the same time as entering into the lease, The Club would enter in an agreement for sale.
- Completion of the sale is conditional upon (a) practical completion of the works and (b) payment by The Club to the Council of all sums due under the lease. If the Club defaulted on payments in the lease, then the sale would not proceed (unless the guarantor was able to rectify this via their guarantor liability).
- The Club will pay £26,000 upon exchange of the agreement which will include the cost of previous works undertaken by the Council of £5,000 within this payment. The Council will retain title until the cost of the refurbishment works, plus interest, plus fees is repaid. If the guarantor provisions under the lease are activated, ultimate ownership of the property would be a matter between the Club and the guarantor (to be agreed) and the legal documentation would be drafted to incorporate these provisions.
- There is a longstop date which will mirror the end of the lease term but if The Club wish they can trigger an early freehold transfer by paying the total of the sums that would otherwise have been payable under the lease.
- There will be a covenant in place to restrict the use of the building to a social club only. This is imposing a wider covenant than the original 1928 Conveyance imposed and therefore this could be seen as further limiting the value of the building. The covenant to keep the building in repair would also be passed on to

The Club (thereby releasing the Council from their original liability).

- 4.6 It is proposed that the £179,500 cost of repairs and the associated fees of £16,150 are funded from the PIP's capital budget.
- 4.7 A draft Lease and Agreement for Sale have been drawn up on the basis of the above terms and will be circulated to The Club who will seek independent legal and accounting advice. The works have been competitively tendered by the Council in accordance with procurement procedures, with the contract to be awarded and legal agreements signed subject to Cabinet approval.
- 4.8 The Club are keen to have completed the works and to have the building operational by October 2014 to allow them to maximise income opportunities. In order to maintain momentum the contractor has mobilised on site under a licence at their own risk and are proceeding with site set up the week commencing 23 June 2014.
- 4.9 Whilst it is recognised that there are risks associated with the above proposals, these are deemed to have been mitigated to a large extent through the measures summarised in Section 5.0 below and on balance it is recommended that this investment aims to safeguard a valuable community asset whilst avoiding ongoing liabilities associated with a redundant building.
- 4.10 Great Dawley Town Council is committed to Social and economic regeneration within the local community. The Town Council has already invested in Dawley Town Hall, the Royal British Legion, St Leonard's Church and Dawley Christian Centre. The Town Council is committed to securing the long term future of the Dawley Social and Memorial Club with the £26,000 grant demonstrating this. The grant is already secured by way of a previous authority and the Town Council will meet on the 15th July to decide terms of becoming a guarantor.

5.0 RISK ASSESSMENT

5.1 Below is a summary of the potential risks arising out of the proposal as well as mitigating actions.

Risk	Mitigation
Works cost more than tendered due to unforeseen issues on site.	<ul style="list-style-type: none"> • The lease allows for a rent adjustment after one year with the rent being adjusted up or down to reflect the total cost of the works.
The valuation undertaken in June 2012 for £21k is out of date (the valuation was originally valid for 6 months) meaning that the premium payable under the agreement is not reflective of the current value and	<ul style="list-style-type: none"> • The district valuer was asked to review their June 2012 valuation in June 2014 and has confirmed that the current value, pre works, would be no greater than the £21k previously quoted. • Since the transfer of The Club occurs post works then the value of the property is also of relevance. To this end the district valuer was contacted again in March 2014 and concluded that following works, when the sale to the club is completed and with the restrictive covenant in place the value of the property would be in the order of £160,000. With the current cost of the works and fees being £195,650, all or most of these costs would need to be considered as contributing towards the freehold valuation of £160,000 so that

<p>therefore the property could be being disposed of at an under value.</p>	<p>the payment made on exchange of the contract of £21,000 is justified.</p>
<p>The Club default on payments during the lease term</p>	<ul style="list-style-type: none"> • The Club will obtain a guarantor who will be a party to the leasing arrangement. • The net amount owed to the Council upon entering into the lease and Agreement will be £195,650 (exclusive of VAT and interest charges) which is broadly in line with the post works valuation, albeit that this accounted for marriage value associated with the existing tenant. • If The Club default, then the lease and agreement are terminated (unless the guarantor activates the guarantor provisions in the lease) and ownership reverts to the Council allowing them to identify alternative options. These options will be very limited, however, given the restrictive covenants on the property and land.
<p>By funding the repairs to this property there is an opportunity cost to the PIP of investing in other property.</p>	<ul style="list-style-type: none"> • The PIP is recovering the cost of the works plus interest at a rate of 4.5% ongoing after 12 months. Whilst this is a lower return than would be expected on a standard PIP investment it protects the building from becoming more dilapidated as the lease would be a full repairing lease where the on-going costs are being met by The Club. • Failure to repair the property is likely to result in the PIP being left with a liability with ongoing cost implications which are currently unfunded.
<p>The Club cease to use the building as a social club and are successful in lifting the restrictive covenant as to use, and redevelop the site resulting in a significant uplift in value</p>	<ul style="list-style-type: none"> • Although the lease will impose a covenant requiring use as a social club, once the sale is completed, imposing the same covenant, it may be difficult for the Council to enforce this as in order to do so the Council would have to show they have land surrounding the building which would benefit from the covenant. However, the benefit of the covenant would pass to other surrounding landowners (which are largely residential) and they would have the ability to enforce the covenant. However, as local authority, we could seek to rely on the fact that the covenant is being imposed to benefit the people in the community. • If The Club were successful in lifting the covenant (assuming they have the funds to do so) the transfer contains a restrictive covenant in favour of the Council not to use the land as anything other than a social club and therefore DSC would also need to approach the Council to seek a release, for which the Council could impose a charge.

6.0 BACKGROUND REPORTS

Disposal of Dawley War Memorial Hall, King Street, Dawley – 20 September 2012

Appendix 1 - Plan of Dawley Social & Memorial Club and Associated Land

