

CHESHIRE EAST COUNCIL

REPORT TO PORTFOLIO HOLDER – REGENERATION & ASSETS

Report of: Property Services Manager
Subject/Title: Open Arms Youth Project
Date of Meeting: 7th December 2015
Portfolio Holder: REGENERATION & ASSETS

1.0 Report Summary

- 1.1 Cheshire East Council has agreed to accept the surrender and simultaneously grant Open Arms Youth Project a new lease.
- 1.2 This will allow the Open Arms Youth Project to sub-let of part of their building to the Riverside Housing Association, who in turn would meet most of the costs incurred in occupying the premises.
- 1.3 The Open Arms Youth Project has advised that they are unable to pay Market Rent and have requested a peppercorn rent (Undervalue).

2.0 Decision Requested

- 2.1 To grant Open Arms a new twenty year lease at an undervalue, reviewed at the Landlord's discretion to Market Rent on every fifth anniversary of the lease.

3.0 Reasons for Recommendations

- 3.1 A simultaneous surrender and grant of a new twenty year lease at an undervalue could allow the Open Arms Youth Project to sub-let part of their building to the Riverside Housing Association for the requested five year term.

4.0 Wards Affected

- 4.1 Handforth

5.0 Local Ward Members

- 5.1 Ward Members Cllr Burkhill and Cllr Mahon

6.0 Policy Implications including - Carbon reduction – Health

- 6.1 The opportunities for the local community would be greatly enhanced by retaining an estate based housing service and extend the use of the venue by hosting a range of additional facilities and services to form a robust Community Hub.

7.0 Financial Implications

- 7.1 Granting a new twenty year lease on full repairing and insuring terms would ensure that the costs in maintaining, repairing and ensuring the building would be met by the tenant rather than by CEC.
- 7.2 Please see details in section 10.6 which confirm that the Open Arms Youth project is unable to pay a market rent and gives the rationale for a peppercorn rent. The current lease was for a peppercorn rent for the first five years with a rent review after five years. At the last rent review, it was decided to keep the rent at a peppercorn value and so the new proposal does not incur any additional costs or reduced income for the council.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.
- 8.2 The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is £2million or less, if the undervalue is higher than £2million consent to the disposal is required from the Secretary of State.
- 8.3 The Council has the power to grant a lease of the land pursuant to s123 of The Local Government Act 1972 subject to any disposal for 7 years or more being at the best consideration that can reasonably be obtained.
- 8.4 Notwithstanding the above powers the Council has a fiduciary duty to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 8.5 All disposals must comply with the European Commission's State Aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and the amount of the subsidy complies with State aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £155,000 (200,000 Euros) in state aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).

9.0 Risk Management

- 9.1 In accordance with legal advice above we perceive there to be no legal risk.

10.0 Background

- 10.1 Open Arms Youth Project occupy their premises off Howty Close, Colshaw, Wilmslow (demise edged red on the attached plan appendix 1), by virtue of a twenty year lease which will commenced on the 21st July 1997.
- 10.2 They requested Landlord's consent to sublet part of the building (area above the red line appendix 2), to Riverside Housing Association to use as a Housing Association Office. This request was authorised by way on an ODR dated 3rd October 2013 (appendix 3), and approved by a Decision Notice dated 21st September 2015 (appendix 4).
- 10.3 The previously agreed ODR (appendix 3), provides that underlet be negotiated and agreed in accordance with the terms and requirements of the existing lease. The existing lease provided that during the first four years the rent was one peppercorn per year, then during the fifth year of the term a sum approved by the Landlord's Surveyor (at his absolute discretion), not exceeding the sum of £5,337.00. This figure reviewed to today's date in accordance with RPI is £8,300.00. We propose that the Market Rent which is £8,300.00 subject to existing user and covenants, on the new lease commencement date, is subject to an undervalue of £8,300.00 and recorded as CEC's contribution to the Open Arms Youth Project.
- 10.4 The rent may at the Landlord's discretion be reviewed to Market Rent every fifth anniversary of the lease.
- 10.5 Open Arm Youth Project were asked to provide evidence of their inability to pay Market Rent and provided a copy of abbreviated accounts 1st April 2013 to 31st March 2014 (appendix 5), and commented as follows: - *"You can see that for the year ending March 2014 we were kept afloat by two grants. One was from Wilmslow Town Council and the other was from Grapevine. These were one off grants. A grant of £2000 from Cheshire East was used to cover the cost of a residential break, which was an exceptional matter.*

Typically running costs are in excess of £8000 per annum, and the main items are utilities, telephone and broadband, cleaning and insurance. No savings are possible.

There is some limited income in the form of payments for usage of the premises but typically this is far less than running costs. So any shortfall has to be made up in grants and donations.

There was a balance of around £7,250 at the beginning of the year. I have not seen accounts for year-end 2015, but I expect the reserves will have been eroded still further".

10.6 CEC Finance have considered the Open Arms abbreviated accounts / comments and advised as follows: -

The abbreviated accounts contain a balance sheet for the Open Arms Youth Project, however, on closer inspection, it seems that these figures relate to income and expenditure and form a trading statement (profit and loss) rather than represent a balance sheet.

A more correct interpretation would be:

£17,084.08	Income (mainly from grants)
£10,623.53	Expenditure
£6,460.55	Profit for the year
£783.53	Retained profit for prior year
£7244.08	Total retained profit (= amount in reserves)

A review of the estimated running costs for 2015-16 shows that without subletting the building, there would be a shortfall of £5825.50 (£7125.50 expenses less £1300 income). This indicates that the Youth Project would be unable to pay a market rent.

Assuming that the building is sub-let to Riverside, there would be a shortfall in 2015-16 of £625.50 (£3425.50 running expenses offset by £1300 Bodywise grant plus £1500 reimbursement of insurance costs).

Both of these amounts could be covered from reserves (assuming that the level hasn't dropped during 2014-15) but this isn't sustainable in the long term as the total reserves at the end of March 2014 were £7244.08.

As both options lead to a loss in 2015-16, we can conclude that the Open Arms Youth Project cannot afford a market rent unless they receive additional grants or income which has not been identified from the documents we have reviewed.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Adrian Williams

Designation: Senior Valuer

Tel No: 01270 686134

Email: Adrian.williams@cheshireeast.gov.uk