

STROUD DISTRICT COUNCIL
STRATEGY AND RESOURCES

**AGENDA
ITEM NO**

10

12 JULY 2018

Report Title	SUBSCRIPTION ROOMS, STROUD
Purpose of Report	To authorise the sale of the freehold of the Subscription Rooms (which includes the adjoining forecourt) to Stroud Town Council and completion of associated works and agreements including grant payment.
Decision(s)	<p>The Committee RESOLVES to:</p> <ol style="list-style-type: none"> 1. Transfer the Council's freehold interest in the Subscription Rooms (which includes the forecourt) and the business operated therefrom to Stroud Town Council for a consideration of £1, subject to the following: <ol style="list-style-type: none"> (a) exchange of contracts for the transfer (to include (i) agreed terms in respect of the matters referred to in resolutions (b), (c) and (d), (ii) overage provisions (iii) terms relating to the application of TUPE and (iv) any interim management arrangements) to be exchanged by the 30th September 2018 with completion of the transfer to take place on or before the 31st March 2019. (b) the provision of a one-off grant of £230,000 to the Town Council towards the operating costs, subject to the completion of a grant agreement. (c) this council funding the costs of and procuring the works to replace the roof and to carry out repairs to the flat roof and masonry, subject to a maximum cost of £125,000. (d) the sale to include fixtures and fittings and all fixed and movable assets as part of the transfer (currently valued at £20,000). 2. Subject to the above, to delegate authority to the Head of Property Services to approve the terms of the contract, transfer and all associated agreements.
Consultation and Feedback	Group Leaders have been consulted on the Heads of Terms agreed. Councillor Whiteside has commented that they look appropriate.

Financial Implications and Risk Assessment

There are a number of financial implications arising from the decisions as set out in this report that members need to consider.

The provision of a one-off grant of £230,000 can be funded from the operating budget of the Subscription Rooms in 2019/20. Other things being equal, the budget would then be allocated as a budget saving from 2020/21 onwards.

The proposed capital expenditure up to a maximum value of £125,000 is not budgeted for and would need to be approved as part of the Council's capital programme. In order to finance this expenditure, it is recommended that the expenditure incurred on the replacement and repair of the roof is forward funded from the Capital Reserve. There is the option to reimburse the Capital Reserve from the 2020/21 revenue budget saving outlined above.

Fixtures and fittings (approximately £20,000), if included in the transfer, will need to be written-off against the revenue account in the current financial year.

The report also sets out the position the authority has taken with regard to the Town Council/Trust in the event that the covenants surrounding the transfer of the Subscription Rooms cannot be met. Overage on a market sale would be applied on a tapered basis.

Should members agree to the transfer, as set out in the report and subject to the delegation requested for the Head of Property Services, the operational budget will be removed and allocated as a budget saving. No further financial support to the Subscription Rooms will be available beyond the date of transfer.

The report also sets out 3 options:

- (1) Approve the resolution in the decision box;
- (2) Run the Sub Rooms with limited opening to reduce costs
- (3) close the building;
- (4) remarket the building on an unrestricted basis

The financial implications above are consistent with Option 1.

With regard to Option 2, no data has been provided to enable an assessment of the financial implications.

<p>Financial Implications and Risk Assessment Cont'd/...</p>	<p>However, based the historic financial performance of the service and the 2017/18 outturn, it would not be unreasonable to suggest that the current level of subsidy required to support the service would be unlikely to reduce, even if this was run with limited opening. Members will recall from the December 2017 report to committee, there was a proposal to continue to provide the Subscription Rooms 'in-house'. This was not considered a viable option.</p> <p>If the decision was to pursue Option 3, the Council would incur costs associated with the discontinuation of the service (e.g. redundancy costs) which would need to be met from the operating budget of the Subscription Rooms.</p> <p>If the building was subsequently remarketed on an unrestricted basis, the Council may be able to realise a capital receipt.</p> <p>Therefore, Option 1 can be seen to forgo a Capital Receipt to the Council through the transfer of the asset to Stroud Town Council.</p> <p>David Stanley – Accountancy Manager (s151 Officer) Tel: 01453 754100 Email david.stanley@stroud.gov.uk</p>
<p>Legal Implications</p>	<p>The disposal of the Sub Rooms proposed by this report requires consideration of the implications of section 123 of the Local Government Act 1972 and of the State Aid Regulations. Those matters are dealt with in paragraphs 4.2 - 4.5 (inclusive) of this report.</p> <p>The Sub Rooms is listed as an Asset of Community Value and its disposal must be in accordance with the relevant provisions of the Localism Act 2011. Paragraph 4.1 of this report deals with this issue.</p> <p>TUPE will apply to the transfer of the business undertaking which will take place simultaneously to the transfer of the property i.e. 31st March 2019 or earlier by agreement.</p> <p>An over-arching contract for the transfer of the property and the undertaking will be prepared and will include all agreed terms in respect of asset and staff transfer, overage, grant conditions, repair works and interim arrangements for management of the business with a view to such agreement being concluded by the end of September.</p> <p>Alan Carr – Solicitor Tel: 01453 754357 Email: alan.carr@stroud.gov.uk</p>

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Options	1. Approve the resolution in the decision box 2. Run the Sub Rooms with limited opening to reduce costs 3. Close the building 4. Remarket the building on an unrestricted basis
Performance Management Follow Up	1. Exchange contracts by 30 th September 2018 3. Complete building works by October 2018 4. Complete Transfer of building, service and staff by 31 st March 2019
Background Papers/ Appendices	Appendix A - Heads of Terms and site plan

1. Background

1.1 At its meeting on 12th April 2018 this committee resolved to delegate authority to the Head of Property Services in consultation with the Director of Customer Services and Group Leaders to agree terms for a transfer of the Subscription Rooms and forecourt to Stroud Town Council, subject to a report back to Strategy & Resources Committee for approval.

2. Progress

2.1 Since the committee meeting officers have met with representatives from Stroud Town Council 5 times. The Town Council has demonstrated confidence in their business plan (for which they had consultant's advice) and have committed £50,000 working capital to the project. Heads of terms for the transfer of the freehold interest of the Subscription Rooms and forecourt have been negotiated and agreed and are shown at Appendix A of this report. Those terms have been negotiated with a view to securing the long term cultural and community use of the building which is considered to be important in sustaining and promoting the socio economic interests of Stroud town and district. The key terms are as follows:

- i. Consideration: £1
- ii. Permitted use: the Subscription Rooms and forecourt to be used as a venue for the provision of live entertainments and other cultural artistic and community activities. Additional restrictions are contained in the draft transfer which will be passed on should Stroud Town Council dispose of the premises in the future. Overage will also be payable should any of the restrictions be released in the next 40 years

- iii. Grant: a one off grant of £230,000, payable as a lump sum at the beginning of year one (2019/20), towards the operational costs for operating the venue in compliance with the permitted use. The figure of £230,000 is based upon the working capital required by the Town Council in their business plan. The grant agreement will be dated 31st March 2019 or earlier and the grant payment will be made on 1st April 2019.
- iv. Capital Works: Stroud District Council will replace the roof and carry out repairs to the flat roof and masonry, ideally by the end October 2018, but before the building is transferred - subject to a maximum cost of £125,000.
- v. Prior to transfer, Stroud Town Council will use all reasonable endeavours to secure the registration of a charitable trust (with appropriate objects) for the purpose of taking a lease of the property and will demonstrate that terms for such a lease have been agreed between the Town Council and the Trust. To this end the Town Council will endeavour to identify appropriate trustees and obtain their agreement to a draft trust deed before the end of June 2018.

2.2 **Tourist Information Centre (TIC)** - The Town Council's business plan does not provide accommodation for the TIC and this is reflected in the heads of terms. The TIC will have to vacate the building, subject to Community Services and Licensing Committee's decision on the future of the service.

2.3 **Repairs** -The District Council has agreed to replace the roof and carry out repairs to the flat roof and masonry. This has the benefit of this council being able to control the costs and quality of the works that it is paying for (the Town Council's consultant's estimate for these is c. £125,000). The repairs will ideally be carried out during the summer/early autumn this year, but before the building is transferred. Arrangements for this work will be provided for in the sale contract.

2.4 Members should, therefore, be aware that we are effectively carrying out the repairs "at risk". However, this is work that has been identified as being necessary for some time and will need to be undertaken if the council retains the building. If the transfer does not proceed and the council remarkets the property for an alternative use, it will arguably make the building more marketable.

2.5 **Fixtures and fittings** – fixtures and fittings and all fixed and movable assets, (excluding telephones and computers) will be included in the transfer to the value of £20,000.

3. Programme:

3.1 In the committee report of 12th April a programme was recommended to ensure that significant progress was made as quickly as possible and to

help satisfy the council that the disposal will promote the economic and/or social well-being of the district.

3.2 Significant progress has been made and key achievements at the time of writing the report have been:

- Heads of Terms for a transfer of the building and forecourt and the key legal documents for these have been drafted and are substantially agreed (subject to formal approval of the Town Council on 2nd July)
- Interim and transitional management arrangements for the business have also been agreed in principle
- 8 Trustees have been appointed to the newly forming 'Stroud Subscription Rooms Trust' and they are reviewing the draft Charitable Incorporated Organisation document provided by SDC's legal team
- An application to register the new trust is expected to be submitted to the Charities Commission by the end of June
- Stroud Town Council is appointing an architect with the aim of submitting a Listed Building application to enable any internal alterations to take place in August 2019

3.3 At the time of writing this report some issues are outstanding with regard to the detail in the legal agreements and a verbal update on whether these have been agreed and formally approved by the Town Council will be given at committee. Discussions are already progressing well with regard to how the practical handover of the building would happen.

3.4 It is proposed that contracts will be exchanged with the Town Council by the end of September 2019 with the District Council continuing to operate the current service up to 31st March 2019, but not beyond that date. This is both to demonstrate commitment from both parties and ensure progress continues at pace. It also enables the focus to move to the work required to successfully handover the operation of the building, including the transfer of staff and set up of the Trust by the end of March next year.

3.5 This will be documented by way of an overarching legal agreement that brings together the transfer document, overage provisions, grant agreement, CIO (Charitable Incorporated Organisation document) and the management and transfer of the business. Contracts will be exchanged by the end of September committing the Town Council to take the property, the service and the staff on, or before, 31st March 2019.

3.6 This means that the council's involvement with the building will end with handover at the end of March 2019, with the exception of monitoring the use of the grant monies.

3.7 The following is a summary of the programme of events and key dates

Date	Event	Responsibility
End of September 2018	Complete legal documentation	SDC & STC
End of September 2018	Exchange unconditional contracts	SDC & STC
By the end of Oct 2018	Replace roof and carry out flat roof and masonry repairs	SDC
Oct 2018 – end of March 2019	Operate current service	SDC
31st March 2019	Service, staff and property transfer	SDC & STC

4 Other legal matters

- 4.1 **Assets of Community Value.** The Subscription Rooms is an Asset of Community Value. A notice to dispose of the asset was issued on 1st March 2017. The interim and full moratorium periods have ended but the (18 month) Protected Period does not end until 31st August 2018. In the event that a notice is issued to provide a further Protected Period of 18 months, a transfer can take place at any point within that period to a community Interest group, so this will not impact on the timing of any transfer to the Town Council.
- 4.2 **S123** This is a disposal at less than best consideration (the freehold interest in the building was put on the market with a guide price of £600k in 2017). In order to comply with section 123 of the Local Government Act 1972 the consent of the Secretary of State is therefore required for the disposal either by virtue of the 2003 General Consent or a specific consent in circumstances where the General Consent does not apply. The General Consent applies where (1) the authority considers that the disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of its area and (2) the consideration does not amount to a subsidy exceeding £2 million.
- 4.3 The key terms and restrictions imposed by the district council (details of which are set out in Appendix A(6) and (7) of this report) are intended to secure the provision of cultural and community facilities for public benefit on the premises and to protect existing public access and use of the forecourt. Those key terms are supported by overage provisions to cover the possibility of any alternative uses or release of any restrictions in the future.
- 4.4 It is for the Council therefore to exercise its judgement as to whether the disposal would meet the criteria for application of the General Consent referred to in paragraph 4.2 (1) and provided it has reasonable grounds for concluding that it would, then the disposal would be lawful. Officers are of the view that the Council could reasonably draw that conclusion.

- 4.5 **State Aid.** The proposed disposal of the Sub Rooms does have the potential to be state aid, even though the proposed disposal is to a public body/charity. However, officers are satisfied that the “aid” in this case would fall within one of the new block exemptions introduced by Commission Regulation 651/2014. Article 53 of that regulation covers aid for culture and heritage conservation and expressly includes artistic and cultural centres, theatres, concert halls and other live entertainments etc. The exemption applies to both capital and revenue support.

5.0 Summary and Recommendation

- 5.1 Group leaders have been consulted on the negotiations and the Heads of Terms agreed, in accordance with the current delegation and their comments are documented in the consultation and feedback box to this report where received.
- 5.2 Significant progress has been made by officers and the Town Council with the key terms and conditions for a transfer agreed, and the majority of the legal agreements required also drafted and substantially agreed. However, if it is not possible to exchange or complete the transfer of the Subscription Rooms the matter will be referred back to committee for consideration.
- 5.3 The transfer will bring to an end the ongoing subsidy that is required to keep the building open and provide the current level of service and no further financial support to the Subscription Rooms will be available beyond the date of transfer. However, the Subscription Rooms is a valuable asset and the transfer will also secure the ongoing provision of cultural and community facilities for public benefit on the premises and protect existing public access and use of the forecourt.
- 5.4 Committee is therefore recommended to authorise the sale of the freehold of the Subscription Rooms (which includes the adjoining forecourt, fixtures and fittings etc.) and transfer the business to Stroud Town Council on the terms set out in this report, including the provision of a grant and completion of repair works to the structure.

Heads of Terms

1. Seller: Stroud District Council, Ebley Mill, Ebley Wharf, Stroud, Glos
2. Purchaser: Stroud Town Council, Thanet House, 58 London Road, Stroud, Glos GL5 2AD
3. Property: Stroud Subscription Rooms and forecourt, George Street, Stroud as shown outlined in red and blue respectively on the attached plan.
4. Consideration: £1 (one pound)
5. Fixtures & Fittings: An inventory and valuation of the fixtures and fittings to be included in the transfer.
6. Permitted Use: The Subscription Rooms and forecourt to be used as a venue for the provision of live entertainments and other cultural artistic and community activities and any other use which is incidental or ancillary to the Permitted Use and which assist in securing the Well Being Objective (securing the promotion or improvement of the economic, social or environmental well being of the district of Stroud).
7. Restrictive Covenants: Stroud Town Council will be required to enter into covenants with Stroud District Council
 - To make parts of the property available for bookings for the purpose of putting on live and other entertainments
 - To have a varied programme of live entertainment suitable to a wide variety of social groups and to enhance the reputation of the property as an arts and entertainment venue locally and regionally.
 - To make appropriate parts of the building available for public exhibitions, educational events and other community uses at all reasonable times and at reasonable cost.
 - To permit the free use of the forecourt for public passage and assembly
 - To comply with the grant conditions
 - To comply with the overage conditions - overage will be triggered by any event which has the effect of discharging or modifying the covenants contained in the transfer or the obtaining of a planning permission which (if implemented) will conflict with the covenants. The overage payable will be the difference between the unrestricted market value and the restricted value of the property on a tapering basis (100% in year one reducing to 0% after 40 years)
 - To keep the building in good and substantial repair
 - Not to make any disposition of the premises unless the purchaser enters into a deed of covenant on the same terms as the transfer to the Town Council

8. Capital Works: Stroud District Council will replace the roof and carry out repairs to the flat roof and masonry by October 2018.
9. Grant: Stroud District Council will provide a one-off grant of £230k (payable in one lump sum) towards the operational costs for operating the venue in compliance with the permitted use (from April 1st 2019).
10. Other Conditions:
 - i. Stroud Town Council will submit a Listed Building application for its proposed alterations to the property by the 30th June 2018
 - ii. Stroud District Council will cease operating the service on the 31st March 2019.
 - iii. Exchange contracts by end of September 2018. Stroud District Council will continue to operate the current service until completion and transfer of the property, service and staff on 31st March 2019 or earlier by agreement.
 - iv. Prior to transfer the Town Council will use all reasonable endeavours to secure the registration of a charitable trust (with appropriate objects) for the purpose of taking a lease of the property and demonstrate that terms for such a lease have been agreed between the Town Council and the Trust. To this end the Town Council will endeavour to identify appropriate trustees and obtain their agreement to a draft trust deed before the end of June 2018.
11. Costs: each party will be responsible for its own costs in this matter.

