
Executive

18 March 2019

Report of the Director of Economy and Place
Portfolio of the Executive Leader (incorporating Finance and Performance)

Proposed Long Term Leases – Buildings at Clarence Gardens and Burnholme

Summary

1. This report seeks an Executive decision on granting long term leases, in line with the Asset Management Strategy, at the locations and to the groups and clubs as set out below:
 - Clarence Gardens – Buildings to The Hut York Ltd
 - Burnholme – Building to Hempland Kids Club

Recommendations

2. The Executive is asked to:
 - i. Agree to undertake a public consultation in line with S123 of the Local Government Act on the potential award of a long lease of two buildings at Clarence Gardens, to The Hut York Ltd ('The Hut') for a term of 99 years, at a peppercorn rent, in accordance with the Community Asset Transfer Policy as set out in the Asset Management Strategy.

Reason: To comply with legislation.

- ii. Delegate to the Director of Economy and Place in consultation with the Executive Member for Finance and Performance to finalise the leasing of these buildings to The Hut York Ltd following consideration of any consultation responses.

Reason: To create a sustainable future use of a community facility and transfer maintenance and repair responsibilities to the tenant.

- iii. Agree to the leasing of a building at the Burnholme Health and Well-Being Campus to the Trustees of Hempland Kids Club (THKC) for a term of 99 years at a peppercorn rent, in accordance with the Community Asset Transfer Policy as set out in the Asset Management Strategy.

Reason: To ensure the sustainable future use of a community facility and transfer maintenance and repair responsibilities to the Trustees.

Background

3. The Community and Operational Asset Strategy (CAS) which is contained within the overall Asset Management Strategy includes the following objectives:-
 - We will use land and building assets to maximise positive outcomes for our communities
 - Assets should be operated by the community where a community group is best placed to deliver the outcomes
4. The Council already has a history of achieving these objectives on a number of assets across the City. A number of Community Asset Transfers (CAT) on community and sports related assets have been completed which has resulted in the development of these assets and increased use of them by community groups and the public and this method of dealing with similar projects will continue as part of the implementation of the CAS.
5. The Council's Community Asset Transfer Policy states that qualifying community groups may be offered a lease for a Term of up to 99 years, in order that the tenant can apply for any funding to support the use of the asset and any work needed to repair/refurbish/improve the property, on a nil rent basis subject to the conditions referred to in that policy including that
 - The tenant has full responsibility for repairs and decoration and for payment of all outgoings relating to the premises including insurance, business rates and utility costs
 - The premises must be open for the public to use for a minimum period each year
 - The tenant is restricted from transferring the leaseThese conditions will be included as specific covenants within the lease which will also include a community use agreement setting out how community groups and the public can use the premises
6. Consultation has taken place with community groups and others to develop business cases for the tenants to take on long term leases for the following properties.

Clarence Gardens – Lease buildings to The Hut York Ltd

7. The Hut York Ltd has occupied the Clarence Gardens Building (see site plan at Annex 1) since 2011. Initially this organisation provided a community service solely for people with mental health issues and/or learning disabilities but this has now expanded to meeting the needs of the whole community including lonely and disadvantaged adults of all ages, elderly,

carers and also referrals from GPs. The service has developed in line with community needs and its member's feedback and now also includes assisting people to learn new skills and offer work experience to help people back into employment.

8. The Hut are now in a position to move to the next level of their strategic plan for which additional space is needed and also the refurbishment of their existing space to make it fit-for-purpose and sustainable. Discussions have taken place with the Council for The Hut to take over the responsibility for an adjacent building which, apart from the use of part of the space as a disabled toilet which is also used by the bowling club, is currently vacant. The Hut have already set up a Funding Committee which has identified sources of external funding (both nationally (such as Big Lottery) and from local Charitable Foundations and is generating match funding from within the organisation which would enable
 - Substantial upgrading and refurbishment of the existing building to make it economically efficient and to match the strategic vision of the Hut's programme
 - Transform the adjacent building into
 - A quiet space for counselling, small group work and training
 - Leave part of the building open as a disabled toilet available for authorised users including the bowling club and staff working in the gardens
 - The Hut would take full responsibility for managing this building as part of the lease
9. To achieve this a longer lease is needed for both buildings to enable the application for this funding, the long term planning for the development of the offer to existing and new users and also the expansion of the already substantial partnership working with local and regional community and public sector organisations.
10. The Hut meet the requirements as set out in the CAS and CAT for a qualifying organisation for such an asset transfer and this application is recommended for the above reasons as well as the added outcome that The Hut will take on the management of the toilet facility.. As stated community access will be set out in the Community Use agreement which will form part of the new lease
11. These buildings are situated on the edge of Clarence Gardens which forms part of Bootham Stray. The Council holds Bootham Stray (and the other Strays around York) for use by the city's residents as open space recreation land.
12. The general public however have not enjoyed access to these buildings since The Hut took occupation in 2011 but they could still be classed as

'open space' for the purposes of the relevant legislation because they were constructed within Clarence Gardens and used for a purpose ancillary to the function as an outdoor public recreation facility, in particular as they are situated on Stray land. Section 123 of the Local Government Act 1972 prohibits local authorities from 'disposing' of 'open space' unless they have first advertised the proposed disposal in a local newspaper in two consecutive weeks and considered any objections received (disposal would include the granting of a long lease). It is therefore considered prudent to follow this process in relation to this proposal.

Burnholme – lease of building to Hempland Kids Club

13. The Trustees of Hempland Kids Club (THKC) have occupied this stand-alone building, which used to be the Youth Club building, on the Burnholme site, for a number of years and have invested heavily in the building making it fit-for-purpose. Several years ago there was a proposal to grant the THKC a long lease of the building. This was then put on hold, due to the closure of Burnholme Community College in 2014 and the project to look at future options for the uses of the whole site, including the part occupied by the Kids Club. The development of this site has now progressed substantially with the construction and completion of The Burnholme Centre and further phases planned in the near future. As the public have not accessed/used this building for recreation and it has not been used for a purpose ancillary to public recreation, the property is not considered to be 'open space' and so it is not considered necessary to publish a notice before the proposed lease may be granted.
14. As the project for the development of the Burnholme site is progressing the area and building occupied by the Kids Club (see Annex 2) is not required to be altered in anyway and so the lease to the Kids Club can now be entered into. The Trustees of the Club have been fully involved in all the consultation stages and the development of the plan for this site and are fully supportive of all that has happened and is proposed. They have also made an application for a 99 year lease at a peppercorn rent for the building and outdoor space which they occupy as they wish to progress their initial proposals for the use and development of this site including continuing use for the kids club, use by the wider community for social and health promoting activities (which will be set out in the community use agreement which will form part of the lease) and the development of the outdoor space for a playground for the users of the building – something which is lacking at the present time.
15. THKC meet the requirements as set out in the Community Asset Transfer policy for a qualifying organisation for such an asset transfer and this application is recommended for the above reasons. The rent will be peppercorn and the Trustees will be responsible for all repair and maintenance of the building and outdoor area. However, as the asset is part

of the larger Burnholme site and the tenant will be using the common areas for access for the users of the building and also some staff parking, a service charge will be paid which will be regularly reviewed.

Consultation

16. In each of the above cases extensive and prolonged consultation has taken place with
- The community organisations which are using the buildings to help them develop their proposals into a feasible plan
 - Council officers from the relevant operational services, property and legal services
 - Ward members where appropriate to listen to their views on the proposals.
 - In respect of the Burnholme case this has also been part of the extensive consultation which has taken place as part of that project which has been reported to the Executive on several occasions.

Options and Analysis

17. In each of the above situations the alternative option would be to grant each of the organisations a shorter lease on more traditional terms which would
- Split the responsibility for repair and maintenance between landlord and tenant
 - Charge the tenant a market rent
18. This option would have the following impacts
- The Council would receive some income although, as it would also have responsibility for the cost of the structural and external repair and maintenance, the net income would be minimal and perhaps result in the need for more investment
 - There would be future flexibility in the use of these assets so if the Council required them to deliver its own services in the future getting possession would be easier. However even with the longer leases the Council could still use some of the space to deliver future requirements by leasing back the space needed which would also provide an income for the tenant to assist with long term sustainability. This option will be included in the leases
19. However the disadvantages in each of these cases in granting shorter term leases are
- The loss of ability for the tenants to realise their business plans for the future use and operation of each of these properties as there would be no certainty in occupation for their long term plans
 - External funders also need the certainty of longer term leases which is critical in each case to develop the properties to meet the intended uses.

Council Plan

20. These proposals support the 3 key priorities, as set out in the Council's Plan 2015-19 as follows

- A prosperous city for all
 - Local residents will be able to enjoy facilities to promote creativity, health and the well-being of those in the neighbourhood
- A focus on front-line services
 - Everyone has access to opportunities regardless of their background
 - Residents are encouraged and supported to live healthily
- A council that listens to residents
 - Engaging with the community to provide suitable space for local residents

Implications

21.

- **Financial** – The Hut currently pay £6,000 in annual rent at Clarence Gardens and THKC a peppercorn rent at Burnholme. Although there will be a loss of annual income this is not significant and the relevant budget managers have confirmed that this has already been factored into their budget proposals as has the potential saving in the need for future repair and maintenance of the buildings
- **Human Resources (HR)** There are no HR implications
- **One Planet Council / Equalities** (Contact – One Planet Council Officer / Equalities Officer) The Better Decision making process has been completed and the outcomes have been incorporated into this report. A copy of the form is attached at Annex 3
- **Legal** - The Council has power under Section 123 of the Local Government Act 1972 and the General Disposal Consent Order to grant a lease of General Fund (non-HRA) land for less than best consideration/full open market without needing the consent of the Secretary of State (for Communities and Local Government) provided that:
 - (i) The difference between the consideration being obtained and best consideration/full O.M.V. is less than £2 Million and
 - (ii) The Council considers that the purpose of the disposal will contribute to the improvement of the economic, environmental or social well-being of the area

If any part of the land is 'open space' within the meaning of Section 336 of the Town and Country Planning Act 1990 (land which is used for the

public recreation or which is laid out as a public garden or a disused burial ground) then S.123 LGA 1972 requires that before any disposal (including a lease) can be completed, the Council must advertise the proposed disposal/lease in a local newspaper in two consecutive weeks and duly consider any objections/comments received.

- **Crime and Disorder** – there are no crime and disorder implications
- **Information Technology (IT)** there are no IT implications
- **Property** – these are covered within the report
- **Planning** – there may be a need for planning applications as the proposals for each of these cases develop – such as the conversion of the additional building in Clarence Gardens to the uses as set out in paragraph 8. Granting the leases is not subject to obtaining the appropriate permissions and consents and these will be dealt with by the tenants as set out by planning legislation etc.

Risk Management

25. For each of the proposals the risk is considered to be low.

Contact Details

Author:

Philip Callow
Commercial Project Manager
Community and Operational
Asset Strategy

Economy and Place
01904 553360

Chief Officer Responsible for the report:

Tracey Carter
Assistant Director – Regeneration and
Asset Management

Report **Date** 25/2/19
Approved

Specialist Implications Officer(s) List information for all

Financial
David Gladders
Accountant
01904 551101.

Legal
Gerard Allen
Senior Solicitor - Property
01904 552004

Wards Affected:

Clarence Gardens – Guildhall
Burnholme - Heworth

For further information please contact the author of the report

Background Papers:

Executive report 28 September 2017 Asset Management Strategy
Economy and Development Policy Development Committee Report
20 November 2018 Community and Operational Asset Strategy – Development
and Implementation

Annexes

- Annex 1** Clarence Gardens site plan showing existing and additional buildings
Annex 2 Burnholme – plan showing proposed area of occupation
Annex 3 One Planet Council Better Decision Making Tool

List of Abbreviations Used in this Report

CAS	Community and Operational Asset Strategy
CAT	Community Asset Transfer
The Hut	The Hut York Ltd
THKC	Trustees of Hemplands Kids Club