

<b>Meeting:</b>	Executive
<b>Meeting date:</b>	12/09/2023
<b>Report of:</b>	Peter Roderick, Acting Director of Public Health
<b>Portfolio of:</b>	Cllr Jo Coles – Executive Member for Health, Wellbeing and Adult Social Care

## **Decision Report: Building Lease for Drug and Alcohol Service**

### **Subject of Report**

1. This report outlines the requirement for lease arrangements to be regulated for premises from which the York Drug and Alcohol Service currently operates from: 3 Blossom St and Bowes Morrell House ('BMH', at 111 Walmgate). There is no change proposed which will substantially affect the delivery of the service.
2. New lease arrangements are sought because they have lapsed and it is necessary to provide assurances that premises will be provided for service delivery to potential bidders for this year's Invitation to Tender for the York Drug and Alcohol Treatment and Recovery Service contract due to start from 1 July 2024.
3. This CMT briefing is in advance of asking members to consider and approve:
  - a. the negotiation and completion of the Bowes Morrell House Lease with York Conservation Trust pursuant to the Heads of Terms, which will be outlined in section 16, and otherwise on substantively the same terms as the Previous Lease;
  - b. the grant of a proposed sub-lease of Bowes Morrell House at a peppercorn rent to any and each of the existing service provider or any service provider appointed pursuant to the proposed tender for the appropriate term of the associated service contract;

- c. the grant of a proposed lease of 3 Blossom Street at a peppercorn rent to any of the existing service provider or any service provider appointed pursuant to the tender for the appropriate term of the associated service contract
  - d. the Director of Public Health in consultation with the Director of Governance, to:
    - (i) decide the provisions of the new headlease and of the necessary sub-leases; including the amount of any rents payable by or to the Council pursuant to the headlease and sub-leases; and
    - (ii) conclude and effect entry into of the new headlease and the necessary sub-leases
4. A decision is required to enable drugs and alcohol treatment and recovery services to operate effectively from suitable buildings. Without it a large number of individuals' recovery would be affected.

## **Pros and Cons**

- 5. Re-establishing lease arrangements for Bowes Morrell House and 3 Blossom St would ensure that re-commissioning of York Drug and Alcohol Service can progress and enable the new service specification to include the Oaktrees programme and provide assurance of 3 Blossom St also being ready for continued delivery of the other aspects of the service.
- 6. Continuing the lease of Bowes Morrell House enables the service to operate its current offer of the Oaktrees rehabilitation programme, a vital part of the treatment and recovery service for individuals in York. It enables service users to remain in their home and community whilst accessing a specialist programme that would only otherwise be offered at a residential rehabilitation centre.
- 7. Due to the specific nature of the service and historic acceptability / suitability of the current location, no other alternative premises suitable for provision of the "Oaktrees" aspect of the service delivery have been identified. Without the relevant lease

arrangements being in place there is a risk to the recommissioning of this service in advance of the current contract ending on 30<sup>th</sup> June 2024.

## **Policy Basis for Decision**

8. The proposed grant of a sub-lease to The Cyrenians Limited of Bowes Morrell House until the expiry of the existing service contract and the proposed grant of a lease of 3 Blossom Street and sub-lease of Bowes Morrell House to the newly appointed service provider is in line with the Council plan and the Health and Wellbeing Strategy 2022-2032.
9. Supporting those with substance use disorders into recovery contributes to the priority that 'Every resident enjoys the best possible health and wellbeing throughout their life' and helps narrow health inequalities, particularly supporting inclusion health groups and some of the most vulnerable in society.

## **Recommendation and Reasons**

10. The recommendations are to authorise:
  - a. the negotiation and completion of the Bowes Morrell lease with York Conservation Trust pursuant to the Heads of Terms outlined the executive paper, and otherwise on substantively the same terms as the Previous Lease;
  - b. the grant of a proposed sub-lease of Bowes Morrell House at a peppercorn rent to any and each of the existing service provider or any service provider appointed pursuant to the proposed tender for the appropriate term of the associated service contract;
  - c. the grant of a proposed lease of 3 Blossom Street at a peppercorn rent to any of the existing service provider or any service provider appointed pursuant to the tender for the appropriate term of the associated service contract
  - d. the Director of Public Health in consultation with the Director of Governance, to:
    - (i) decide the provisions of the new headlease and of the necessary sub-leases; including the amount of any rents

payable by or to the Council pursuant to the headlease and sub-leases; and

(ii) conclude and effect entry into of the new headlease and the necessary sub- leases

11. The rationale for the recommendations is to enable drugs and alcohol treatment and recovery services to operate effectively from suitable buildings.

## **Background**

12. Preparation for the recommissioning of York Drug and Alcohol Service (YDAS) is underway and in the final stages of agreeing relevant paperwork with Legal and Procurement colleagues. Previous reports have been taken to Executive Board (see Background Papers). Lease arrangements for premises provided by CYC for service delivery are required as part of the Invitation To Tender documents.
13. York Drug and Alcohol Service operates from two key premises: 111 Walmgate and 3 Blossom St. The rolling 12 week rehabilitation programme, 'Oaktrees', has operated out of 111 Walmgate, known as Bowes Morrell House (BMH), since December 2012. The building provides an appropriate therapeutic environment for the programme. York Conservation Trust is the freehold proprietor of BMH. The previous lease granted to CYC of BMH on 15th May 2019 expired on 30th June 2021 (the Previous Lease). We are advised by Legal Services that it is likely that there is currently a monthly periodic tenancy in place.
14. YDAS also currently operate out of part of premises owned by City of York Council at 3 Blossom Street. The freehold interest in 3 Blossom Street is currently owned by CYC and Property Services has not informed the project team of any intention to sell the freehold.
15. Given the specialist nature of the services delivered by YDAS, and the broad acceptability for the premises to local communities over the past years, there are no other properties known or available to CYC that would be appropriate to operate the 'Oaktrees' service from. Accordingly, it is considered necessary for CYC to take a further lease of BMH so that CYC can in turn grant a sub-lease of BMH to the service provider to host continued/future service

provision. It is also planned that any incoming service provider would continue to deliver the other parts of the service from the current premises at 3 Blossom Street.

16. The Heads of Terms for the BMH Lease have been agreed as follows:
- a. 6 year lease commencing on the date of completion of the Lease and terminating on 14 July 2029 (contracted out of/excluded from the security of tenure/renewal provisions of the Landlord and Tenant Act 1954);
  - b. stepped rent proposed ie Years 1 and 2 - £29,000pa; Years 3 and 4 - £30,000pa and Years 5 and 6 - £31,000 pa; VAT will be payable by CYC on the rent in addition (as YCT are in the process of making a VAT election/option to tax in respect of their freehold interest in BMH)
  - c. the rent is exclusive of business rates.
  - d. CYC will also be liable to:
    - i. Reimburse YCT for costs incurred by YCT in insuring BMH against risk of damage by fire, storm etc
    - ii. Reimburse YCT for costs incurred by YCT in operation and maintenance of heating, lighting systems etc capped at £3,500 per annum;
  - e. CYC will be responsible for paying a fair and reasonable proportion of the costs incurred by YCT of the repair, maintenance, clearance and renewal of the gutters and other rainwater goods used exclusively by the premises or by the building;
  - f. CYC may sub-let the premises to the current sub-tenant (The Cyrenians Limited trading as Changing Lives), or to another organisation contracted to provide drug and alcohol services to CYC from 1 July 2024;
  - g. CYC is to maintain business interruption insurance covering business interruption in the event of works to the premises that the YCT is obliged to carry out pursuant to its obligations in the BMH Lease;
  - h. There is to be no break (early termination) clause entitling CYC to terminate the lease early;
  - i. Otherwise to be on similar terms as the Previous Lease.
17. It is proposed that simultaneously with the grant of the BMH Lease to CYC, CYC would grant a sub-lease of the whole of BMH to The Cyrenians Limited for the duration of the remainder of the term of the existing service contract, subject to their consent. CYC would

thereafter grant a sub-lease of the whole of BMH to the service provider subsequently appointed to carry out the drug and alcohol service provision in accordance with the proposed tender process.

18. Any sub-lease of BMH would be granted in compliance with the terms of the BMH Lease. It is proposed that any incoming sub-tenant would only pay a peppercorn rent. That reflects current arrangements with the service provider and is necessary for delivery of the service. Any future sub-lease to be granted would be excluded from the security of tenure/renewal provisions of the Landlord and Tenant Act 1954.
19. The anticipated rent, service charge, and insurance commitments that CYC would incur pursuant to the anticipated BMH Lease will be met from the public health budget.
20. CYC officers also anticipate granting a lease of 3 Blossom Street to the incoming service provider at a peppercorn rent and for the duration of the delivery of the anticipated service contract, reflecting existing arrangements.

## **Consultation Analysis**

21. Internal consultation has been conducted with Asset and Property Management and Legal Services. Their comments are outlined below in full.

### **Property / Legal Matters**

22. Legal Services have advised the project team that the specified Term (duration) of the Previous Lease of Bowes Morrell House expired on 30th June 2021. (As CYC is not in occupation of Bowes Morrell House we consider that CYC does not have the benefit of security of tenure/lease renewal rights pursuant to the provisions of the Landlord and Tenant Act 1954 in relation to Bowes Morrell House). It is likely that CYC currently benefits from a monthly periodic tenancy. The specified Term of the previous sub-lease of BMH granted on 15th May 2019 to The Cyrenians Limited expired on 25th June 2021.
23. Legal Services are told that the current arrangements are in place because there was uncertainty about the continued use of Bowes Morrell House for the purposes of delivery of the service. However,

a decision has since been made to regularise the current tenancy arrangements and to secure sufficient legal rights over Bowes Morrell House to permit the anticipated future delivery of the identified drug and alcohol service.

24. The Council has statutory powers:

(i) (pursuant to Section 120 of the Local Government Act 1972) to acquire an interest in land (including taking a lease of land) for the purposes of any of its functions or for the purposes of the benefit, improvement or development of its area;

(ii) (pursuant to Section 123 of the Local Government Act 1972) to dispose of any land held by the Council (including granting a lease of it). Although Section 123 requires that the consent of the Secretary of State for Housing, Communities and Local Government is required for a disposal at a consideration (price) less than best reasonably obtained, such consent is automatically given for the disposal of General Fund/non-HRA land by a General Consent Order where (as is the case here) both of the following conditions are satisfied:

(a) The Council considers that the disposal will contribute to the promotion or improvement of the economic, environmental or social well-being of its area; and

(b) The difference/shortfall between the consideration/monetary receipt obtained and best consideration amount does not exceed £2M

- As those conditions are satisfied here, it is not necessary to apply to the SoS for consent to the granting to service providers of leases of either BMH or 3 Blossom Street.

25. Legal Services recommend that in conjunction with the grant (if any) of the new BMH Lease, there a new sub-lease of Bowes Morrell House is offered to The Cyrenians Limited for the remainder of the duration of their existing service contract. We then recommend that there is a new sub-lease entered into with any incoming service provider for a duration which is at least 5 working days less than the proposed term of the BMH Lease and

which is otherwise on substantively the same terms as the previous sub-lease to the existing service provider.

26. Deliberate steps are being taken to ensure that the proposed term of the new service provider contract and the proposed Bowes Morrell House Lease correspond. Legal have also recommended provisions be added within the service contract to ensure that in the event of any proposed extension of the service contract by CYC beyond the initial five year period, the service provider would be obliged to enter into associated necessary leasehold arrangements in relation to both Bowes Morrell House and 3 Blossom Street or in relation to alternative premises (if any) identified by the project team.

27. Any such terms would be offered at the absolute discretion of CYC, but the service provider would have discretion as to whether or not to accept any new leasehold arrangements. It is recommended such determination will need to be agreed by a date (e.g. potentially 18 months) in advance of the expiry of the proposed service contract to ensure that the CYC project team will either;

A) have sufficient time to obtain any fresh approvals for the service contract extension and any further leases and property agreements and sufficient time to enter into related agreements;

or

B) to prepare for re-procurement and any further leases or property arrangements connected to that.

28. As the proposed BMH Lease is to be on substantively the same terms as the Previous Lease apart from in relation to the matters detailed within the Heads of Terms, we have not commented further on the terms of the BMH Lease. It is critical that YCT's co-operation in this matter is ensured to try to ensure that the BMH Lease and associated sub-lease of Bowes Morrell House to The Cyrenians Limited are in place in advance of the proposed tender. Accordingly, it is inappropriate to approach YCT to consider granting the new BMH Lease on different terms.

29. Legal services have recommended to the project team that a new lease of 3 Blossom Street is entered into with the current service provider, The Cyrenians Limited for the remainder of the term of



the existing service contract to regularise the existing tenancy arrangements. We cannot comment on whether The Cyrenians Limited will agree to this proposal.

### **Commercial Legal matters**

30. All CYC procurements and related contracts are subject to the Public Contracts Regulations 2015 (“PCRs”) and the Council’s Contract Procedure Rules (“CPRs”). The YDAS Service Contract will need be commissioned via a compliant procurement route in accordance with the PCRs and CPRs. The Commercial Procurement team will advise upon this and a contract is to be drafted for the tender with support from legal services.
31. As the property arrangements potentially include rent less than normal market value they may be impacted by the Subsidy Control Act 2022. Legal should be engaged to carry out a full assessment before any subleases are entered into.

### **Options Analysis and Evidential Basis**

32. There is a clear evidence-base for the delivery of drug and alcohol services, and the recovery model is shown to be effective at producing long term better health outcomes for those who access treatment.
33. This service requires buildings to deliver from, with the current premises seen as acceptable to the community and suitable for the purpose. It is therefore the preferred option to enter into the lease arrangements outlined above.

### **Organisational Impact and Implications**

#### **34. Financial**

The stepped rent on Bowes Morrell house proposed of £29,000pa (Years 1 and 2), £30,000pa (Years 3 and 4) and £31,000 pa (Years 5 and 6) plus VAT is an increase on the current rent of £27,000pa. This increased cost will be met through the Public Health grant over the course of the lease term. In addition, CYC will reimburse YCT for costs incurred

by YCT in operation and maintenance of heating, lighting systems etc capped at £3,500 per annum, and will be responsible for paying a fair and reasonable proportion of the costs incurred by YCT of the repair, maintenance, clearance and renewal of the gutters and other rainwater goods used exclusively by the premises or by the building. These costs will again be met through budgeted resource within the Public Health grant.

**35. Human Resources (HR)**

There are no HR implications of this decision

**36. Legal**

See the Consultation Analysis section of this report for Legal comment.

**37. Procurement**

Commercial Procurement are working with Public Health colleagues to draft the Invitation to Tender documentation to be published and invite competitive tender submissions to award a contract for the York Drug and Alcohol and Treatment and Recovery Service. Within this tender documentation it will include the specific details of the building lease agreements for the buildings currently used as premises for the York Drug and Alcohol Service, namely Bowes Morrell House (BMH) and 3 Blossom Street, so that all interested bidders have full, open access to the details of these premises for the York Drug and Alcohol Treatment and Recovery Service contract so all bidders can consider if they incorporate the use of these premises to provide this service.

**38. Health and Wellbeing**

Supporting those with addictions into recovery is in line with the Council plan and the Health and Wellbeing Strategy 2022-2032. It helps narrow health inequalities, particularly supporting inclusion health groups and some of the most vulnerable in society.

**39. Environment and Climate action**

Bowes Morell House has an EPC rating 'E'. While the historical nature of the building makes improvement works challenging, there are a list of suggested measures that are simple and cost-effective to install. Although the budget envelope does not allow us to fund any modifications directly, York Conservation Trust may have planned works which contribute to a decreased environmental impact of the building, and CYC will work actively to support this as and where possible.

3 Blossom Street has an EPC rating of 'D'. It is a challenging building to retrofit but there are simple cost-effective measures that can be undertaken to improve energy efficiency.

#### **40. Affordability**

The locations of both 3 Blossom St and Bowes Morrell House are accessible by public transport, meaning that although travel costs are still a consideration for customers, they are lower than taxi costs might be.

#### **41. Equalities and Human Rights**

An Equalities Impact Assessment (EIA) is attached as an annexe to this report.

#### **42. Data Protection and Privacy**

No Data Protection Impact Assessment (DPIA) is required as there no change in service delivery model or the associated data protection and security arrangements are proposed.

#### **43. Communications**

Since no changes in service delivery model are proposed, there are no communications implications.

#### **44. Economy**

There are no economic implication of this report.

#### **45. Asset and Property Management**

Property Services have been engaged by the Public Health team to negotiate terms for a new lease of BMH with YCT, having identified that there are no other buildings within CYC's portfolio that would be suitable for housing the Oaktrees service. We have also considered other available properties on the open letting market but it is agreed that BMH provides the most suitable building for the service in an appropriate location. We have worked to finalise Heads of Terms for a new lease of BMH (as cited earlier in this report) with YCT's agent and are now in a position to instruct Legal Services on the new lease.

## Risks and Mitigations

46. As outlined in this paper, not having a building for the Oaktrees element of the service to be delivered from would affect a large number of individuals' recovery journey, and would constitute a major risk for the delivery of a statutory public health service.
47. In addition, the lack of a new lease for BMH would put the Invitation to Tender for the YDAS at risk
48. The obvious mitigation for these risks are for Executive to approve the granting of a new lease according the details above.

## Wards Impacted

49. Whilst this report concerns two buildings within the Guildhall ward, this decision impacts all wards because the properties in question are for delivery of city-wide services on offer to all York residents who need it.

## Contact details

For further information please contact the authors of this Decision Report.

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## **Background papers**

- Background paper: *Recommissioning of Alcohol & Drug Treatment and Recovery Services, November 2022*  
<https://democracy.york.gov.uk/documents/s163813/Recommissioning%20of%20Alcohol%20Drug%20Services.pdf>

## **Annexes**

- Annex A: Equalities Impact Assessment (EIA)