

Cabinet

6 January 2015

Report of the Cabinet Member for Culture, Leisure and Tourism

Disposal of the Theatre Royal to the York Conservation Trust

Summary

1. This report sets out a proposal to dispose of the Theatre Royal to the York Conservation Trust (YCT) for a nominal sum in order to ensure that the necessary repairs can be undertaken to the Theatre to support its' major refurbishment programme. This will also protect the Council from a long term repairs and maintenance liability for a listed building.

Background

2. One of the key principles for the asset review of all council property and land agreed by Cabinet in November 2012 was to identify opportunities to reduce the ongoing repairs and maintenance costs of the council's assets and explore how the Councils assets can be used to support other Council projects and priorities.
3. The Theatre Royal is currently in the first year of a 25 year lease to the York Citizens Theatre Trust at an annual rent of £27,250 with a 2 year rent free period during the refurbishment, to reflect that fact that the theatre will not be fully commercially operational during that period. CYC remain responsible for external and structural repairs and maintenance. The building is in poor condition and requires significant immediate investment to address urgent repairs, particularly on the roof. The immediate repairs are estimated at around £320k with significant further works needed in coming years to ensure the ongoing safety and condition of this important historic building and to make it fit for purpose as an important part of the city's cultural activity.

The Theatre Royal

4. York Theatre Royal was built in 1744 on, and among, the site of the medieval St. Leonard's Hospital. Parts of the old hospital can still be seen in the modern building, including archways and walls. Under the

stage lies a well, which is believed to be dated from the Roman era of York's history. The 1744 theatre replaced a theatre in Minster Yard, built by Thomas Keregan, with the encouragement of the City Corporation, in 1734. Twenty five years after its construction, in 1769, Tate Wilkinson paid £500 for a Royal Patent, and, accordingly, it was renamed the Theatre Royal. Wilkinson ran a company which was reckoned to be the leading provincial company, and he attracted many of the finest actors of the period.

5. Since Wilkinson's time the theatre has undergone several renovations and upgrades. In the late 1800s the theatre was refurbished into the Victorian style, including, in 1880, a new Victorian Gothic frontage, which is decorated with carved heads representing Elizabeth I and characters from Shakespeare's plays. The latest major redevelopment was an extensive 1967 renovation of the theatre, with a new modernist foyer (architect: Patrick Gwynne). The theatre and its modern foyer has been designated a Grade II* listed building by English Heritage.
6. CYC (or rather its predecessors) have owned the freehold on the land since the seventeenth century. There has not recently been a programme of preventative maintenance due to financial pressures. In the last 5 years around £60K has been spent on reactive emergency repairs.

The Theatre Royal Business Plan

7. York Theatre Royal is a key regional producing theatre that includes a studio theatre focusing on new writing and plays for younger audiences. A well-established education and outreach programme underpins the work. Arts Council England (ACE) assesses the theatre as “a model of best practice with regards to their artistic partnership work and their engagement with young people.” Theatregoers contribute over £3.4m annually to the local economy.
8. The theatre is a very entrepreneurial organisation with a strong track record of developing collaborations and partnerships that attract money into the city. Comparison with other producing theatres shows that York Theatre Royal:
 - Achieves a significantly higher proportion of earned income (around 75%)
 - Requires below average local authority funding in both the amount and proportion of turnover (around 7-8%)

9. The Theatre Royal have been successful in securing £2.88m of funding from the ACE, which with £720k raised by the Theatre Royal, a contribution of £500k from CYC this adds up to a total capital budget of £4.1m to fund a programme of refurbishment and improvement. This will enable them to create a more flexible and inviting space that will help them generate greater annual revenue and continue their journey to self funding as the planned decrease in their grant from CYC continues.

10. The refurbishment includes works to:-
 - Vastly improve the quality of experience and comfort levels in the main theatre auditorium, opening this up to new theatrical innovation. The current configuration of the main auditorium is problematic: many seats offer a very poor relationship between audience and performers. This particularly affects the stalls, where the gentle rake in relation to the steep rise of the stage creates a sharp separation between audiences and stage. The main auditorium will be reconfigured to draw audiences into the heart of the performance, creating ambiance and intimacy while addressing important comfort and access constraints and installing a lift to provide access to the Dress Circle. The fabric of the auditorium will be repaired and technical equipment upgraded.
 - Create an attractive and inviting public face for the building, so transforming the welcome which the theatre offers to the outside world. The existing, dark colonnade and blank wall will be replaced with a new glazed enclosure, creating an open, porous interface with the city.
 - Increase the size, quality and turnover of the front of house operation with an extended foyer area – 100% larger than the current, cramped spaces integrating the Box Office and welcome areas and to offer improved audience facilities in the ground floor foyer area, creating a new café, bistro, bar and toilets. Access and ease of movement for audiences will be vastly improved across the entire building.
 - Provide new artistic opportunities for our communities to create and animate the Theatre space. Flexibility is being designed into the expanded public areas, offering communities a wider canvas on which to create and experiment. Existing issues of poor sound separation between the main house, studio theatre and front of house areas will also be addressed and resolved.

- Significantly improve energy efficiency and environmental performance through a range of measures including the replacement of boilers, improving insulation in the roof and overhauling ventilation systems in the main house – bringing savings in energy use, while contributing to audience comfort and enjoyment.
 - increase the size, quality and turnover of the Box Office, catering and commercial operations
 - Lower operating costs
11. Currently the roof is leaking in a number of places and ACE are understandably unwilling to fund the substantial refurbishment works when the building is in an inadequate state of repair and such works could be subject to damage from risk from water ingress. The Theatre's long term business case depends on these works and they have approached the Council as their landlord to put the building into order and undertake our legal responsibilities under the lease.

Options and analysis

12. Given the financial pressures upon CYC, a range of alternatives have been explored and they are set out below.

Option 1 – Retain and undertake capital repairs to the Theatre Royal

Option 2 - Dispose of the Theatre Royal on the open market

Option 3 – Dispose of the Theatre Royal to York Conservation Trust

13. It is the responsibility of the Council to ensure it receives best value from the disposal of all its land and buildings. In this case, given the fact that there is a long lease on the building which would make any disposal conditional, obtaining this best value can be achieved by :-
- Open market sale with conditions – the asset would be placed on the market with the existing 25 year lease as a Theatre. All offers would then be considered both on price and the strength of tenure of the sitting tenant.
 - Direct negotiations with one party – this method is used when the other party has an interest in the property – i.e. a current tenant – or

there is a very good economic and financial reason for dealing directly with them. These other parties are known as 'special purchasers' or 'particular buyers.' Disposal by this method is permitted as long as an independent valuation is carried out by a firm of chartered surveyors showing that market value has been obtained.

Option 1 – Retain and repair

14. This would require an immediate capital commitment of £320k which is not budgeted for.
15. As refurbishment work commences it is highly likely that further urgent works will become apparent and a further capital bid would be made for 2015/16 of at least £100k to ensure that CYC had sufficient funding to meet its landlord's obligations in the next two years.
16. CYC would continue to own the asset and receive the annual rent but would have an ongoing financial liability for a listed building which will inevitably require further repairs and maintenance expenditure after the refurbishment is complete which in all likelihood will over time exceed the rental income.

Option 2 – Dispose on the open market

17. The Theatre would be advertised on the open market with the same and all bids would be assessed on their capital value. Given the very restricted market for a listed building with a sitting tenant and a long lease it is not recommended that we pursue an open market disposal. It is very unlikely that there would be any commercial uplift from taking this approach. There would be no certainty for the theatre of who their new landlord would be and what repairs and maintenance works they would undertake. It would therefore result in considerable delay to the theatre refurbishment.

Option 2 - Dispose to York Conservation Trust

18. The Board of Trustees of York Citizens Theatre Trust (YCTT) have been in discussion with York Conservation Trust (YCT) with a view to CYC selling the Theatre to YCT who would then lease the building to YCTT and undertake an agreed investment of circa £450,000 to cover the immediate maintenance issues of the roof requiring replacement and other external repairs.

19. In the long term York Conservation Trust has also made a commitment to the Theatre Trust Masterplan of investment over the next 10 years. This is expected to include a complete refurbishment, both external and internal, of the Georgian property on Duncombe Place. This was originally the home of the famous actor/manager Tate Wilkinson who was responsible in 1769 for gaining the Royal patent and who ran a successful Touring Theatre across Yorkshire and the North East in the late 18th Century. It will also include further investment to upgrade all parts of the theatre property and maintain them into the future. It is extremely unlikely that any other bidder would wish to undertake this arrangement as there is no profit margin to be made and significant investment required.
20. This option would see the disposal to York Conservation Trust as a special purchaser. The Theatre Royal has been independently valued at between £330k and £340k after the refurbishment works have been completed. Without these works the Theatre is worth between 15% and 25% less, a value of approx £240k - £280k. A summary of the report is attached at Annex 1. The value is low because it is calculated based upon the financial sustainability and yield of a theatre which is inevitably modest. CYC are currently obliged to undertake £320k of repairs works immediately. On this basis the Theatre effectively has a nil value and the proposal would be to dispose of the Theatre for a nominal sum of £1 with a restricted covenant for use as a theatre. No future lease income would be received by CYC
21. This would then enable the YCTT to proceed with their refurbishment plans with no interruption to the project timescale and would give them long term security in the building with a commitment to its upkeep which regrettably in the current financial climate CYC is not able to make.
22. Given the significant risk of ongoing maintenance costs and the need to provide the Theatre Royal with a suitably well maintained building to undertake their improvement scheme upon, it is recommended that Option 3 be agreed, to dispose of the Theatre Royal to York Conservation Trust.

Consultation

23. Ongoing consultation has been undertaken with the management of the Theatre Royal, the York Conservation Trust and York Civic Trust who are all supportive of this proposal. YCTT are very supportive of

this option in view of YCTs remit to invest in the conservation of the heritage of York and ensure that its buildings have the widest possible public access. York Conservation Trust is the current landlord for the Theatre Trust in respect of the De Grey House and Rooms and has invested in the refurbishment of both of these properties to specifications agreed with the Theatre Trust. This existing relationship has demonstrated a commitment to supporting YCTT in its ambitions and its sustainability as a cultural business in the long term.

Council Plan

24. The proposed sale would meet the Council priorities for **Creating Jobs and Growing the Economy** by supporting the ongoing development of the Theatre Royal as one of the Cities key cultural assets which both creates jobs and increases the visitor economy as well as **Building Strong Communities** by providing excellent theatre facilities for York residents.

Implications

25.

Financial – If Cabinet decide to undertake the repairs (Option 1) this would require an immediate capital commitment of £320k. Some of this could come from the remaining capital contingency budget (£183k unallocated in 2014/15) and a further unallocated £80k in the property repairs capital budget (however there could be further calls upon this budget for urgent repairs as the winter progresses.) This would still require a further commitment of £57k which would be met at a cost of £4.9k per annum to be funded from the treasury budget and incorporated into the budget for 15/16.

A decision to dispose of the theatre (Option 2 and 3) will reduce income to the commercial property portfolio. This is currently budgeted at £23k pa as per the previous lease. This will require revenue growth of £23k from 2015/16 and this will be incorporated into the budget for 2015/16.

Property – all the implications are contained in this report

Legal – The Council must generally obtain best value on land sales or obtain the Secretary of State's consent to the disposal. This duty to achieve the best consideration which is reasonably obtainable is contained in section 123 of the Local Government Act 1972. The Council is under no duty to dispose of land through particular means

such as through open marketing. A failure to market does though increase the risk of a sale being challenged. However, the Courts though have said that a breach of section 123 is only likely to be found if:

“the council has (a) failed to take proper advice or (b) failed to follow proper advice for reasons which cannot be justified or (c) although following proper advice, followed advice which was so plainly erroneous that in accepting it the council must have known, or at least ought to have known, that it was acting unreasonably.”

Similarly a sale at less than market value can give rise to European state aid issues.

In this case the valuation evidence provides a proper basis for the recommendations.

Equalities - There are no equalities implications arising from the disposal. YCTT will continue to provide the service set out in the service level agreement with the Council which includes a requirement to ensure the building is fully accessible and to raise the quality of the facilities and programmes provided for all audiences.

Human Resources – no implications

Risk Management

26. Disposal of the Theatre would remove the long term risk of increasing repairs and maintenance liabilities.

Recommendations

27. That Cabinet agrees to dispose of the Theatre Royal for £1 to York Conservation Trust to lease to York Citizens Theatre Trust and to reduce the commercial income budget by £23,000 pa. from 2015/16.

Reason: To ensure the long term operation of the Theatre Royal and remove ongoing financial repairs and maintenance liabilities for the Council.

Contact Details

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Wards Affected: All			√
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Background Papers: None

Annexes:

1 – Summary of Independent Valuation

Glossary of Abbreviations used in the report:

ACE - Arts Council England

CYC – City of York Council

YCT - York Conservation Trust

YCTT - York Citizens Theatre Trust