



## London Borough of Enfield

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| <b>Report Title</b>                           | Award of lease for Millfield Complex  |
| <b>Report to:</b>                             | Cabinet   |
| <b>Date of Meeting:</b>                       | 13 March 2024   |
| <b>Cabinet Member:</b>                        | Cllr Anyanwu - Cabinet Member for Public Spaces, Culture and Local Economy                            |
| <b>Director:</b>                              | Cheryl Headon – Interim Director of Parks, Leisure & Culture  |
| <b>Report Author:</b>                         | Wesley Pemberton <a href="mailto:wesley.pemberton@enfield.gov.uk">wesley.pemberton@enfield.gov.uk</a> |
| <b>Ward(s) affected:</b>                      | Haselbury   |
| <b>Key Decision Number</b>                    | KD 5699   |
| <b>Implementation date, if not called in:</b> |   |
| <b>Classification:</b>                        | Part 1 & 2 (Para 3)   |

### Purpose of Report

1. This report sets out proposals to let Millfield House & Theatre site (but not including the adjoining park land known as St. David's Park) (the property/site) for use as a theatre, performing arts school and performing

arts college (including the hiring out of space at the property to community groups and community users). This report outlines the Councils options and reasons for recommending the preferred recommended bidder.

## Recommendations

- I. Agree to grant a lease of the Millfield House & Theatre site to Platinum Performing Arts, for up to 30 years to include:
  - A peppercorn rent for years 1-5.
  - On the 5<sup>th</sup> and 10<sup>th</sup> anniversary of the term a rent review based on Platinum Performing Art accounts.
  - See Part 2
  - Further rent reviews on the 20<sup>th</sup> and 25<sup>th</sup> anniversary of the term
  - On the 5<sup>th</sup> anniversary of the term of the commencement date, a break option will be exercisable by the Council in it's absolute discretion or by the lessee.
  - From the 10<sup>th</sup> anniversary of the term, a 6 months' notice rolling break option will be exercisable by the Council in it's absolute discretion or by the lessee.
  - The lease to prohibit assignment, subletting and charging of the lease and premises.
  - The lease will restrict use of the premises for cultural (as a theatre) and community use only
- II. Delegate Authority to the Director of Leisure, Parks and Culture and the Director of Property, in consultation with the Cabinet Member for Public Spaces, Culture and Local Economy to finalise lease terms and any associated documentation in consultation with the Director of Law and Governance.
- III. To note that as no change of use of the site is proposed, public consultation is not required as suggested in KD5637.
- IV. To note that the terms of the lease are to include full repair and maintenance of the site.
- V. To note that the library at Millfield will remain on the site and will continue to be provided by Platinum Performing Arts.
- VI. To agree a separate service level agreement in relation to the library

## Background and Options

2. Millfield Arts Centre was opened as an arts centre in 1979, with the Theatre opening in 1988. Both underwent refurbishment in 2010. The site is beside the A10 on Silver Street, Edmonton and consists of Millfield House and theatre complex and its outbuildings.
3. Millfield House (Grade II\* listed) is currently used by Platinum Arts Academy as a dance and theatre college, the Over 50s Forum and a variety of local arts groups. The house contains dance studios, arts rooms, a sound recording space, a pottery workshop and kiln, and a public library with c15,000pa attendance (many of these are students at the college).

4. Millfield Theatre has a 368-seat auditorium, bar, kitchen and backstage spaces. The Theatre is also available for hire for private events.

#### *Current Operations*

5. In late 2020 Platinum Performing Arts (PPA) moved into Millfield House, and as a trial in 2021 they took on the management of the site, which includes theatre programming and operating the community library on behalf of the council. The purpose of the trial was to explore the potential for revenue savings while maintaining the cultural venue for public and community use.
6. The current theatre programme includes original performances, pantomime, comedy, wrestling, children's shows, popular and arts theatre, music nights, cabaret, karaoke and more, including both professional and community productions and a popular school's dance festival each June.
7. The theatre also includes programming for local communities including, Greek Arts Festival, Bulgarian Folk and Traditions Event and London Turkish Speakers Theatre Festival. Postcode data indicates that attendance is highly local, with some customers from Haringey and Waltham Forest.
8. Currently, the council pay for the majority of the operational costs, as well as repair and maintenance costs, for Millfield House and Theatre. PPA manage the theatre staff, theatre programming and day to day management of the premises – including continuing access to the public for the community library. The 22/23 net cost of the site was approx. £597k.
9. As a result of the commencement of the trial, in 2021 Culture Services undertook a service restructure - reducing Millfield LBE staff to a Millfield Manager and Operations Supervisor for a 1-year period and the retained cleaning team of 4 staff.
10. Since 2022, there have been no allocated permanent council staff for the Millfield site beyond the cleaning team. There is a significant team of agency staff that are currently employed to operate the theatre provision, at the cost of the council. It was expected that the restructure would realise a total budget saving but as this was not achieved, there is currently no allocated council budget for the 2023/24 period.
11. There was an expectancy that the long-term future of Millfield House & Theatre would be confirmed within a year of the Culture Services restructure. Since 2022, the site has operated without any dedicated management resource, relying heavily on agency staff and support from Dugdale Arts Centre team, to deliver its theatre programming, with no dedicated budget.
12. Councillors felt strongly that the freehold interest of the site, along with a cultural and community use and community library, should be retained. In October 2023, KD5637 authorised the marketing of a full repair and insurance lease of the site excluding the caretakers lodge and excluding

the adjoining park land known as St. David's Park. The report confirmed that bidders were to be required to submit a rental offer, along with detailed proposals for the intended use of the site, specifying how the cultural/community use would be delivered.

13. This decision provided delegated authority for the following recommendations:

- I. Agree to place on the open market the Millfield House & Theatre site and to invite offers for a long lease of the same for cultural and/ or community use.
- II. Agree that the community library currently located at Millfield House will be retained on the site, in a manner and at a location to be agreed by the Council.
- III. Delegate to the Director of Leisure, Parks and Culture authority to agree, in consultation with the Cabinet Member for Public Spaces, Culture and Local Economy, the criteria and weightings to be adopted for the purpose of evaluation of bids.
- IV. Delegate Authority to the Director of Leisure, Parks and Culture in consultation with the Director of Property to agree the marketing material and approach.
- V. To note that this matter will be reported back to members once bids have been evaluated.
- VI. To note that consultation will take place during the marketing exercise on the potential impact of any change of existing use.
- VII. To note that any proposed change of use will be subject to any necessary planning permissions and other consents.

*Marketing of Millfield House & Theatre*

14. Following the approval of the KD5637, Property Services (PS) appointed specialist agents Montagu Evans (ME) to manage the marketing process of the site.

15. Marketing particulars were prepared by ME, detailing the full extent of the site, a scoring matrix to inform bidders how bids would be assessed and confirming the following requirements for any future lease of the site:

- A lease term of up to 30 years
- Any future use of the site to retain a cultural and community use.
- Submissions should include a proposal to retain and improve accessibility to the community library currently located at Millfield.
- That consultation would take place if a change of existing use was proposed.

16. The site was marketed for a four-week period, commencing on 2<sup>nd</sup> November 2023 and finishing 1<sup>st</sup> December 2023. The opportunity was advertised on both the council's and ME's websites, as well as via Agents Society and LoopNet - portals for commercial property opportunities that captures a wide spread of interest. A property viewing day was held on 24<sup>th</sup> November, allowing interested parties to tour the site.

17. Four (4) bids were received for the site, although three (3) of the bids did not fully meet the prerequisite future site uses. The three bids that did not meet the bidding requirements, only provided a lease offer and brief high-level summaries of proposed site uses. The three bids also did not address the continuation or improvements to the community library.

18. The following is an anonymised summary of the submitted bids received:

| <b>Bidder</b>            | <b>Proposed Use</b>   | <b>Financial Offer</b> |
|--------------------------|---|------------------------|
| Platinum Performing Arts | Continuation and development of current use - Theatre, Performing Arts College/school, Library, community culture programme | Peppercorn Rent        |
| Bidder B                 | Wedding/Celebration Events Venue  | £150k pa               |
| Bidder C                 | Event Venue   | £335k pa               |
| Bidder D                 | Church – with community use   | £250k pa               |

**Platinum Performing Arts Proposal**

19. PPA’s proposal, attached at Appendix 1, is to build on the current operations at Millfield House and Theatre, where the house, theatre, library, and park work together to deliver a dynamic mix of performances, events, workshops, classes and community activity.

20. PPA’s proposal is to extend its remit to cover all aspects of Millfield including the existing school, college and community activities. This will enable a strong single vision to drive delivery, attract funders and supporters, economies of scale in staffing and resourcing, and inbuilt flexibility to support adaptability to change and opportunity.

21. In order to support the growth of Millfield audience numbers, PPA propose to invest in:

- A standalone box office and CRM system
- A dedicated and up-to-date website
- A full-time marketing manager post
- A growing programme of library events and family workshops

22. As a privately run organisation PPA has access to grants and support that the council does not. PPA currently obtains funding from a range of community funders and are in conversation with Arts Council England and the National Lottery Heritage Fund about supporting projects and ongoing activity. PPA have identified grant funding programmes, of a total value of £985k, for non-revenue funded activity, over the next five years which they hope to tap into which includes:

- Arts Council England programme to grow the community centred programming
- Arts Council England for dance programme bringing together young talent and community groups

- Arts Council England Library Improvement Fund to develop new library space
- National Lottery Heritage Fund bid for an intergenerational community project exploring the different 'lost theatres' of Edmonton and the types of creative activity that went on in each
- City Bridge Trust for positive activities programme lead by local community groups using arts to inspire positive change in their neighbourhoods

23. PPA have confirmed that a new and improved library for the site is a key ambition and have agreed the need to improve library accessibility. PPA are committed to working closely with the council to agree the best route and identified three potential improvement options, including:

- A new entry route into the current space,
- A purpose-built container-based space within the smaller carpark or,
- By transforming an underused space at the front of the theatre (preferred option).

24. PPA propose to collaborate with LBE on a more thorough options appraisal considering requirements for physical and perceptual access, shelf space, activity space, computing facilities, security and apply for funding to deliver via the Arts Council's next Library Improvement Fund. Any change to the library will need to be carefully considered and will be approved by the Executive Director for Environment and Communities.

25. In the interim, PPA propose to continue to improve access to and use of the current space via a programme of exhibitions, curated book displays and ad hoc events and capital investment in some improved signage and pavement trail across the site that makes the library offer more visible to users from the street.

26. PPA propose to programme and manage Millfield as a single site, encompassing theatre, library, and house. PPA propose that the existing company will extend its remit to run all aspects of Millfield as well as the existing school, college, and community activities. They believe that this will enable a strong single vision to drive delivery and attract funders and supporters, economies of scale in staffing and resourcing, and inbuilt flexibility that enables us to respond quickly to change and to opportunity. To deliver their proposal, PPA have detailed the following additional staffing structure:

| Resourcing                | FTE |
|---------------------------|-----|
| Facilities Manager        | 1   |
| Marketing Manager         | 1   |
| Technical Manager         | 0.5 |
| Duty Manager              | 2   |
| Box Officer Supervisor    | 2   |
| Administrator             | 1   |
| Bar Staff                 | 3   |
| Cleaning Team             | 4   |
| Programming & Management* | 2   |
| *No Salary Cost           |     |

27. PPA have successfully bid to take a lease of up to 30 years, for a peppercorn rent. It is proposed that on the 5<sup>th</sup> and 10<sup>th</sup> anniversary of the term commencement date, that there will be a rent review. Any proposed changes will be based on PPA accounts, where PPA shall pay to the Council annually, a market rate to be agreed. PPA will provide details of all income generated from the premises to enable the council as landlord to verify the income received at the premises.

28. On the 5<sup>th</sup> anniversary of the term of the commencement date, a break option will be exercisable by either party. From year 10, a 6 months' notice rolling break option will be exercisable by either party. If a market rate cannot be agreed either parties can exercise the break, thus returning the premises back to the council. There will be additional rent reviews on the 20<sup>th</sup> and 25<sup>th</sup> anniversary of the term.

29. The lease will also contain wording to the effect that there is to be an absolute prohibition of assignment, subletting and charging of the lease and premises. The full offer includes:

- Maintenance of library service with stock and software provided by LBE library services,
- PPA will take over the current site maintenance team under the TUPE Regulations 2006.
- Collaboration with council on of the library provision within the site to improve accessibility, including raising the necessary funds for delivery within 4 years of contract signature,
- Maintenance of accessibly priced community spaces, including art room, office and workshop areas, with rental rates rising no higher than 2% above inflation annually,
- Delivery of an inspiring, accessible, and mixed theatre programme that includes community programming alongside a varied professional programme, with a minimum of 140 performances per year, with ticket prices rising no more than 2% above inflation annually,
- Maintenance of the Grade II listed Millfield House and listed buildings within its curtilage with respect to agreed procedures for maintenance of historic buildings, following guidance from suitable qualified heritage officers.

- Maintenance of the theatre buildings, furnishings, fittings and technical equipment to good standards, meeting all public safety requirements as a minimum, to ensure it can continue to serve as a professional theatre venue.
- 1 free use of the theatre building during one week of each year of the term for 3.5 hours per day Mon-Thurs annually for Enfield Council (including box office and ushering, exclusive of tech team and publicity fees).
- A license agreement at the site with the Over 50's Forum in similar format to the existing licence agreement.

30. See Part 2

31. See Part 2

32. See Part 2

33. See Part 2

34. See Part 2

35. See Part 2

36. In addition to the above, PPA have also suggested a six-monthly review for the first three years of the lease commencement, stating:

*We suggest a six-monthly review process is instituted with LBE for first three years, falling to annual review thereafter in which health of the business and achievement on key social impact milestones is reviewed, and strategies are aligned. We anticipate presentation of our management accounts on an annual basis and public reporting of key metrics agreed with LBE to demonstrate the value delivered by the council-owned asset.*

#### **Montagu Evans (ME) Bid Recommendation**

37. ME has recommended that the PPA bid as the preferred bidder. The other three bids received by ME were dismissed for the following reasons:

- Lack of supporting evidence over how they would fulfil the community benefit criteria as set out by the Council.
- Lack of clarity over how they were going to make use of all buildings on site.
- Questionable community intentions, leading Montagu Evans to believe that some parties were enquiring solely on the basis for their own commercial gain, with little regard for the local community.

38. The following was noted as part of ME's recommendations:

*On balance the offer that best accords with the Council's objectives is that from Platinum Performing Arts. Although it is the lowest financial offer, in our opinion, it also represents the lowest risk and best value for the*



*community. This is particularly important in the context of the buildings being aged and the Council seeking to defray its liabilities. In addition, it retains the community uses as required and PPA is a known quantity insofar as they know the demands of the community and of the building. In addition, the potential for them to access external funding is positive and may help with future capital plans at the property.*

*Whereas the other offers received were financially higher, the lack of due diligence from the parties and the associated risk from the sources of finance raises some concerns, particularly in the context of both the lack of community offering and the proposals from some to close the theatre, which illustrates a potential over-optimism in relation to the change of use.*

*Overall, we are satisfied that, in the circumstances and in the context of the clear objectives set by the Council, that the proposal from PPA represents best consideration.*

39. The report, prepared by ME, detailing the marketing and best considerations are attached at Appendix 2.

### **Options**

40. There is currently no budget in place for the management or maintenance of the site. The annual net cost for 2022/23 was £597k, as set out in report KD5637. This arrangement is unsustainable.

41. The future of the site needs to be determined as soon as possible, with the available options having been considered being:

#### *Option A - Do Nothing*

42. The current arrangement has no formal lease or contract in place and cannot continue in this way. This option would likely see cost pressures continuing to rise. Doing nothing is not a sensible option and cannot be recommended.

#### *Option B – Agree a repair and insurance lease with PPA*

43. Granting a full repair and insurance lease of the site to PPA will ensure that the cultural/community use of the site, along with the community library will continue, whilst the annual budget pressure would be removed from the LBE. It is considered that this option would limit objections from stakeholders and the local community.

#### *Option C – Close all operations and activity on the site.*

44. Although closing operations and all activity on site would reduce operational costs, maintenance would still be required to ensure the public safety of park users was not at risk through unmaintained buildings on site.

45. If the site was to be closed, there could also be increased security risks due to buildings within the site becoming unoccupied. This option

therefore would not completely remove cost pressures from the council's budget.

### **Preferred Option and Reasons For Preferred Option**

46. The Council feel strongly that it is important the local authority retains the freehold interest. The preferred option is Option B above – to award a full repair and insurance lease of up to 30 years to PPA.
47. Enfield has a population of 330,000 including c56,000 children and young people in full time education. The borough suffers the fourth highest levels of deprivation in London and has markedly low cultural infrastructure, both physical and organisational.
48. The Council goals of marketing the Millfield complex was to relive the ongoing annual cost pressure, whilst retaining the culture/community and use a library at the site. ME ensured the property was well exposed to the property market and to those best placed to deliver the use requirements. As detailed further in para 32, ME concluded:

*Overall, we are satisfied that, in the circumstances and in the context of the clear objectives set by the Council, that the proposal from PPA represents best consideration.*

49. By awarding a lease to PPA, the ongoing unbudgeted annual cost pressure of circa £500k+, will be alleviated for the Council, whilst ensuring an experienced culture provider operates the site, which will continue to support the delivery of both LBE Culture which are:

Creating Opportunities for Young People - We will give priority to developing varied creative ways for young people to develop creative skills and interests, and so improve their life chances.

Culture Everyday - We value the role of culture in community wellbeing and want to ensure that the benefits of cultural participation and enjoyment are shared by everybody.

Sustainable Culture - We will establish a smarter approach to inward investment to support the sustainability of the borough's cultural provision.

50. The LBE is also an Arts Council England Priority Place, which aims increase investment and engagement in culture through the following priorities:

Culture Everyday - To enable communities across the borough to take part in culture activities by facilitating more cultural and creative activities, inside and outside venues.

Opportunities for Young People - Increase opportunity for young people to engage in culture. Gaining a better understanding of current provision and developing a future Schools art programme and increasing visibility and access to creative careers.

Cultural Communities, Creative People - Increase cultural capacity and provision in the borough, through increased access to funding for cultural activities including Arts Council funding, new partnerships with regional

and national peers and the development of new funding mechanisms – S106 / procurement / grants.

51. PPA are a highly experienced performing arts organisation, that have operated from Millfield complex since 2008. They have been providing performing and creative arts to children and young people in the borough ever since. PPA's students reflect the diverse Enfield community – including looked after young people, children affected by gang violence, children whose families have experienced generations of worklessness. All of PPA's first cohort of college graduates have gone on to work or have agents, with a high number of students currently appearing in the West End. By granting a lease to PPA, they will be able to access funding streams that are unavailable to local authorities, which will allow further investment into young people of the borough.

52. PPA deliver for Enfield's children and young people significant non arts focused community projects on life lessons, resilience, and positive decision-making. The current project programme includes:

**Power to Make a Change** A five year project funded by the National Lottery Community Fund, working with secondary schools and local community groups in the borough to offer young people workshops tailored specifically to their needs. They cover a range of topics including gang, gun and knife crimes, making the right choices, building self-esteem, mental health, social media and peer pressures.

**Dream, Believe, Succeed** A collaborative project in partnership with Edmonton Community Partnership and funded by the Mayor of London's Young Londoner's Fund, created to provide a safe and judgement-free environment for children to open up about their experiences as a young person in the community. PPA have been teaching various creative arts workshops in primary schools and community outreach settings with the ambition to inspire and encourage the children to feel a sense of worth and purpose regardless of their abilities, cultures, sexualities or genders.

**Making History** Funded by the Covid Community Fund to work with children and young people in the borough of Enfield who were negatively impacted by the Covid pandemic. Children and young people engaged in virtual and face-to-face workshops and individual sessions who required support through the pandemic to empower them, give them a sense of purpose and routine / structure.

53. By granting a lease to PPA, it would also confirm the continuation of Millfield community library, with PPA providing the staffing resource. In addition, PPA are committed to delivering access improvements and have identified a potential ACE grant funding for 25/26.

54. It is recommended that as part of the lease between the council and PPA, that a mechanism is in place to ensure the full community programme continues to be delivered.

55. It is noted that this option would see a continuation of a popular cultural, community and library hub for Edmonton and the surrounding areas. As there would be no change of use of the site, planning permission would not be required, and neither would public consultation ahead of lease award.

## **Risks**

56. See part 2.

### **Relevance to Council Plans and Strategies**

*Priority 2 - Strong, healthy and safe communities*

57. By retaining a cultural/community use at the site it will continue to provide opportunities to socially connect residents which will play a vital role in influencing people's physical and mental health and wellbeing.

58. By retaining a community library on site, a library service will continue to be provided locally, providing further opportunities to connect in a safe place and providing access to resources to support people's mental health and wellbeing.

*Principle 3 - Financial resilience*

59. By removing the budget pressure by letting the property, whilst retaining use of the property for cultural services, this will help support investment in other council services over the long-term.

## **Financial Implications**

60. The report seeks to award the award of lease for Millfield Complex, PPA have successfully bid to take a lease of 30 years, with reviews in years 5,10,20,25. The preferred option is Option B above – to award a 30-year repair and insurance lease to PPA (the local authority retains the freehold interest).

61. The preferred option proposes in year 1-10, a peppercorn rent, with a review after the 5<sup>th</sup> and 10<sup>th</sup> anniversary after which a rent review will undertaken, which could generate a potential revenue for the site. The full offer includes: - (see paragraph 28).

62. All repairs and maintenance or operational costs (including the library) will be met and managed by PPA, which will save the Council operational costs (Circa £500k+).

63. By awarding a lease to PPA, the ongoing unbudgeted annual cost pressure of circa £500k+ will be alleviated for the Council, whilst ensuring an experienced culture provider operates the site, which will continue to support the delivery of Council's priorities. PPA's proposal, attached at Appendix 1, is to build on the current operations at Millfield House and Theatre, where the house, theatre, library, and park work together to

deliver a dynamic mix of performances, events, workshops, classes and community activity.

64. The annual Millfield revenue net cost to the Council over the last 5 years was as shown in the table below (£1.926m cumulative). Within this, the annual revenue net cost for 2022/23 was £597k. As there was no budget to cover this, the overspend had to be covered from the council's reserves.

|                                   |   | 2018/19        | 2019/20       | 2020/21      | 2021/22      | 2022/23       |
|-----------------------------------|---|----------------|---------------|--------------|--------------|---------------|
|                                   |   | £000s          | £000s         | £000s        | £000s        | £000s         |
| <b>Expenditure</b>                | Employee Costs                                | £479           | £445          | £556         | £327         | £338          |
|                                   | Supplies and services                         | £775           | £731          | £263         | £464         | £577          |
|                                   | Other Operating Costs                         | £190           | £127          | £57          | £40          | £236          |
| <b>Expenditure Total</b>          |   | <b>£1,443</b>  | <b>£1,303</b> | <b>£876</b>  | <b>£831</b>  | <b>£1,151</b> |
| <b>Income</b>                     | Ticket Sales, Venue Hire, Bar Sales and Other | -£1,050        | -£929         | -£67         | -£388        | -£553         |
|                                   | Grants & Contributions                        | -£43           | £0            | -£535        | -£114        | £0            |
| <b>Income Total</b>               |   | <b>-£1,093</b> | <b>-£929</b>  | <b>-£602</b> | <b>-£502</b> | <b>-£553</b>  |
| <b>Net (Expenditure v Income)</b> |   | <b>£351</b>    | <b>£374</b>   | <b>£275</b>  | <b>£329</b>  | <b>£597</b>   |

## Legal Implications

### *Property Legal Implications*

65. Section 123(1) of the Local Government Act 1972 enables a Council to dispose of land held by them in any manner they wish. This includes disposal by way of grant of lease. Section 123(2) provides that a Council shall not dispose of land for a consideration less than the best that can reasonably be obtained. Montague Evans, a firm of surveyors, was instructed by Strategic Property Services to market the letting of the property for a term of up to 30 years for use by the tenant for a cultural/ community use and theatre. As mentioned at paragraphs 30 and 31 of the report, Montague Evans in its report to Strategic Property Services, recommended Platinum Performing Arts (PPA) as the preferred bidder (despite it putting forward the lowest financial offer) as it best accords with the Council's objectives. It also stated (as quoted at paragraph 31 of the report) that "Overall, we are satisfied that, in the circumstances and in the context of the clear objectives set by the Council, that the proposal from PPA represents best consideration".
66. Any disposal of property envisaged by the subject matter of this report must also comply with the Council's Constitution, including the Property Procedure Rules. As set out in the report Strategic Property Services instructed Montague Evans, a firm of surveyors, to market the letting of the property.

67. The Council must demonstrate that it has exercised its powers in a manner that is reasonable and proportionate and, in a manner, consistent with its fiduciary duties to ensure sound management of the public finances. There is also the Council's general duty at public law to exercise its powers reasonably, properly and in accordance with best value, and to have regard to its fiduciary duty and to general administrative law principles with regard to mitigation of risk and due diligence. The report author has sought to do this in the report.

#### *Contract Legal Implications*

68. Provided that the deliverables under the arrangement with PPA (including the provision of services, such as the library offering) are legitimately incorporated into the lease via a landlord/tenant relationship, then the Property Procedure Rules apply (rather than triggering the need for a procurement under the Contract Procedure Rules and the Concession Contract Regulations 2016). Officers leading on the implementation of the arrangements are confident this is the case on the grounds that the culture/community (theatre and performing arts school) provision by PPA will not be done on behalf of the Council, or controlled by the Council, and the library provision is ancillary to the lease.

#### *TUPE Legal Implication*

69. The maintenance team made of 4 cleaners is currently employed by the Council. Under the proposed lease, the maintenance team will transfer to PPA. As this constitute a business transfer, the members of staff would be subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

70. TUPE currently protect the entitlement of UK employees to the same terms and conditions, with continuity of employment, as they had before the transfer. The Council must ensure that adequate time is allowed for consultations and to take any measures in connection with it in order to fulfil its obligations under TUPE. The Council must also have regards to the Best Value Authorities Staff Transfers (Pension Direction 2007) in the transfer of any affected employees under TUPE.

#### **Property Implications**

71. Officers in the council instructed Montagu Evans to negotiate & agree heads of terms with the preferred bidder PPA.

72. It is noted that PPA were the only bidder willing to run the council's library on their behalf. The deliverables of this arrangement will be incorporated into the lease via a landlord/tenant relationship.

73. Key points to note are that there is a covenant test and review of the rent in year ten of the lease. This is in light of the fact that PPA will take a lease over the buildings in their current condition subject to a condition survey being undertaken and attached to the lease when executed. A schedule of condition will be prepared as part of this lease in which it will record the

current condition of the premises and PPA will be required to maintain & repair the premises in the condition that they received them.

74. The proposed lease will contain a rolling 6 monthly break option provision which is exercisable by both parties after year 10 which would allow the council in a harmonious way to take back the premises if PPA are not in a financial position to continue to operate their proposed use, including managing the Library on behalf of the council, rather than having an ability to allow PPA assign their lease.
75. The recommendation is to accept the agreed heads of terms submitted by PPA and generate a new lease which mirrors these heads of terms and to delegate this task to the Property Director to implement and sign off as part of this process.

### **Equalities Implications**

76. In making this decision the Council must consider the Public Sector Equality Duty (PSED) under Section 149 of the Equality Act 2010. This Act creates a public sector equality duty which requires that when the Council makes decisions it must have regard to the need to: (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act (b) Advance equality of opportunity between people who share a protected characteristic and those who do not (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation marriage and civil partnership.
77. The equality impact assessment confirmed that by awarding a lease of the site to PPA it will have a positive impact on all protected characteristics and is detailed in the assessment attached at Appendix 3,

### **HR and Workforce Implications**

78. There are currently 4 maintenance/cleaning staff providing these services, who are directly employed by the Council.
79. The proposal to award the lease of Millfield Theatre to PPA is likely to constitute a business transfer under the TUPE legislation. Therefore, staff currently employed by the Council would transfer over to PPA under their current terms and conditions.
80. The TUPE regulations require consultation to take place with staff (and trade union representatives) directly or indirectly impacted by the transfer, at the earliest opportunity. Initial consultation will be led by the Council as the 'transferors' in the transfer arrangements. PPA management will need to notify the Council of any intended 'measures' they propose as a result of the transfer, to support the Council in the consultation process with staff and unions. Under TUPE regulations, staff who transfer have their terms

and conditions of employment protected and it should be notes that these can only be changed in limited circumstances.

### **Environmental and Climate Change Implications**

81. The proposal in this report is for the management of a Council asset to a not-for-profit operator. It is expected that the required repair and maintenance would reduce energy demand.

82. PPA has access to grant funding, not available to local authorities. PPA will target grant funding for the installation of green energy technologies (such as solar panels) at Millfield. It is expected that a prerequisite of funding would be demonstrable action taken, to reduce the sites energy demand. This will have a positive environmental impact.

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### **Appendices**

Appendix 1 – PPA written submission.

Appendix 2 – ME marketing and best consideration report

Appendix 3 - EQIA

Appendix 4 – See Part 2