

## **CABINET – 18 DECEMBER 2018**

### **THE MILL ARTS CENTRE, BANBURY**

#### **Report by Director for Capital, Investment & Delivery**

#### **Recommendations**

1. **The Cabinet is RECOMMENDED to: -**
  - (a) to declare The Mill surplus to the county council's requirements.
  - (b) to approve the principle of transferring The Mill to Cherwell District Council, as a named purchaser for £1 which is less than best consideration subject to the necessary legal safeguards being in place.
  - (c) to delegate to the Director of Law & Governance in conjunction with the Director of Capital Investment and Delivery to conclude the necessary legal agreement; and
  - (d) to request that officers review the procedure for the disposal of surplus land at less than market value and bring an updated approach back to Cabinet at the appropriate time (once the current government consultation on this issue has concluded).

#### **Executive Summary**

2. The Mill is a key artistic venue in the north of the County and until 2013 was directly run by Oxfordshire County Council. The Mill Building is owned by the county council and leased to the Mill Arts Centre Trust on a peppercorn rent. Indirect financial support through property and ICT costs amount to circa £110,000 per annum. Cherwell District Council also provide grant support in region of £42,000 per annum.
3. The county council and district council encouraged the Trust to come forward with a business plan in order that both councils could consider how the long-term sustainability of the centre could be secured. The proposed business plan did not anticipate operating with a surplus until 2027/28 and assumed overall transitional funding across the 10-year period would be in region of £685,000 and did not account for a number of factors set out at paragraph 14.

4. The county and district councils sought an independent valuation of the property to inform discussions about transfer from the county council. Taking into account a recent condition survey and restrictions on use the market value was judged to be £275,000.
5. The report sets out a proposal to transfer the building to Cherwell District Council for £1 and the rationale for a sale at less than best consideration.

### **Introduction**

6. The Mill is a key artistic venue in the north of the County accommodated within a 4 storey converted Mill building that is used as studios, offices, meeting rooms and bar facilities and has been extended to the rear to create a large auditorium space. Until 2013, The Mill was directly run by Oxfordshire County Council.
7. The Mill building is owned by the county council and leased to the Mill Arts Centre Trust (MACT) on a peppercorn rent. The terms of the lease result in indirect financial support through property and ICT costs of circa £110,000 per annum. The county council also funds the building insurance costs.
8. Cherwell District Council also provide grant support in region of £42,000 per annum.
9. This is the only arts centre venue owned by the county council, others within Oxfordshire are held by district councils. It is not a statutory function for the council and arts funding was ceased as part of savings linked to service and resource planning in 2013 but is a provision that we support for the community of Banbury and surrounding areas.
10. Since then the Mill management and governance has strengthened and it is now a Charitable Incorporated Organisation (Trust). It is increasingly improving its' financial position but will take time to further grow in capacity and revenue. Covering all current operating costs continues to be challenging for Trust and is the reason why the county council has not withdrawn its financial subsidies sooner.
11. Upon expiry of the initial lease at the end of March 2017 the county council agreed a further 12-month lease to enable the Trust to produce a business case to demonstrate how it would become self-financing.

12. The county council and district council encouraged the Trust to come forward with a business plan in order that both councils could consider how the long-term sustainability of the centre could be secured.
13. A report was presented in February 2018 which illustrated the extent of further subsidy which would be necessary to support the Mill achieving a secure financial footing. The business plan did not anticipate operating with a surplus until 2027/28 and assumed overall transitional funding across the 10-year period would be in region of £685,000.
14. This business plan did not account for:
  - (a) any level of rental charge
  - (b) building maintenance other than minor repairs
  - (c) costs of developing designs beyond architectural services for a planning application
  - (d) the implications arising from an increase in budgeted loan repayments for capital works. The business case proposed capital investment of c£3,500,000 but this was derived from a cost/m<sup>2</sup> as opposed to a detailed cost estimate and conflicted with previous professional advice for a similar proposal in 2013 which suggested costs of £6,740,000 (£8,685,000 at today's values).
15. Whilst further work was carried out by the Trust with an aim to address these issues it became apparent that the overall scale of subsidy required from the county council was unsustainable.
16. Upon expiry of the lease at the end of March 2018 the county council agreed a further lease of 6 months – the short term was deliberate to ensure that the Trust continued to work with county and district councils to achieve a long-term solution to the situation. A further six-month lease is being put in place from 1 October 2018.

### **Proposed sale**

17. The county and district councils agreed to jointly procure an independent valuation of the property from Savills to inform discussions about transfer from the county council.
18. Savills opinion of market value of the freehold interest with a restriction on use for the building to be only used for Community & Cultural Purposes is £275,000. This valuation takes account of items identified in the recent condition survey.

19. Following evaluation of the condition report for the Mill, understanding of the county council's current levels of subsidy and aspirations for future development that the Trust have proposed, Cherwell DC has proposed purchasing the Mill from the county council for £1.
20. Given the circumstances this seems reasonable as it will release the county council from future costs associated with the Mill and should be accepted.
21. Whilst this represents a disposal for less than best consideration transfer to Cherwell will enable the county council's corporate plan priorities for thriving communities to be supported and enable us to do the best we can for residents in accordance with our values.

### **Legal Implications**

22. The county council is able to exercise its powers to dispose of property for less than best consideration (where the undervalue does not exceed £2m and the authority considers the disposal will help to secure the promotion or improvement of the economic, social or environmental wellbeing of its area) by virtue of a General Consent from the Secretary of State which came into force on 4 August 2003.
23. It is felt that the Mill Arts Centre would fall within the General Consent and the county council has also had regard to the matters identified in Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best value consideration that can reasonably be obtained. The council's Executive's resolution of 28 October 2003 as to the use of the General Consent is attached at annex 1. The resolution enables disposals with part of the consideration being by way of services or provision of accommodation provided (in lieu of monetary consideration) that has a value to the county council and it should be noted that the disposal of The Mill does not deliver these.
24. It should, however, be noted that a sale at an undervalue would be a public subsidy and could result in unlawful state aid, but there is scope to classify the aid as "permitted aid" in this instance. Article 53 permits "investment aid" to be given for cultural centres, spaces or theatres towards their conservation or improvement of the infrastructure, provided that at least 80% of the time or space capacity per year is used for cultural purposes.
25. This would enable the district council to pay the county council a figure they can justify, but as the sale would be at an undervalue from the county council's perspective there would need to be a restrictive covenant to ensure

80% of the property is used for cultural purposes to avoid the state aid issue. There would also need to be additional safeguards to ensure the continuing enforceability of this covenant and to protect the county council's interest on any disposal or if the restriction was modified or discharged (applying statutory procedures for this purpose).

26. It has been established that the general obligation to offer back to the former owner under the Crichel Down Rules does not apply to The Mill given that the property is non-agricultural land being disposed of more than 25 years after its acquisition in 1971.

### **Timescales**

27. Cherwell DC Full Council are considering this matter (acquisition of the Mill) on 17<sup>th</sup> December.
28. It is expected that the transfer should take place as soon as possible and within this financial year in order to enable the district council to grant a long lease to the Trust, which will in turn mean that the Trust will be able to obtain grant funding. It will also enable the necessary arrangements to take over full management of the centre (ICT and property).

### **Communications**

29. The Mill Arts Centre Trust are aware of the negotiations to transfer The Mill to the district council and are keen for it to take place as soon as possible. We have been working closely with district council colleagues to ensure regular and consistent communication with the Trust.

### **Financial and Staff Implications**

30. The current short-term lease results in property and ICT costs to the county council of circa £110,000 per annum, plus building insurance costs. It also assumes officer support including ICT. The grant of a long-term lease on the same basis would result in ongoing costs to the county council, although at present the county council is not tied into a long-term agreement.
31. In addition to the revenue costs the county council has been funding, the recent condition survey commissioned by Cherwell DC identifies c£600,000 of repairs and maintenance work that is required to the Mill. Whilst some minor repair work has been funded by the county council there is no provision in current plans for work of this level. This would therefore present a significant pressure on the repairs programme for the whole of the council's estate if the county council granted a long-term lease on the same basis. Transfer of the

building to Cherwell DC will ensure that financial subsidies including ICT support to the Mill Trust will cease.

32. The site is not within the disposal programme and the current capital programme funding does not assume any capital receipt from this site.

### **Equalities Implications**

33. The Mill is the only dedicated multi arts space in Banbury and the surrounding area. It aims to inspire, educate and engage the community by providing a high quality artistic and learning and participation programme that raises aspirations for audiences and elevates the profile of Banbury.
34. In addition to a varied programme of events of plays, concerts, workshops, The Mill works with Children and young people, older people and people with special needs through:
- Visual Arts Programme provides the opportunity for young children and their families to work with professional artists to explore their creativity and develop new social networks.
  - Work placement scheme Gen Y, run in partnership with Banbury and Bicester College offers young people aged between 16-18 years the opportunity to gain work experience in a creative environment before making final career/higher education choices.
  - 2016 saw The Mill embarking on a partnership project to develop artistic activities for older people including dance and music projects.
  - The hub for creative activity for the arts and health social prescribing initiative.

### **Risk Management**

35. The key risk of not transferring The Mill to the district council is the adverse publicity should The Mill close as a consequence of the county council's withdrawal unaccounted for financial support.
36. Transfer to the district council will mean that the county council will lose an opportunity to utilise the building for other purposes.

ALEXANDRA BAILEY  
Director for Capital, Investment & Delivery

Contact Officers:

Claire Phillips, Asset and Investment Manager  
Karen Lister, Head of Estates

November 2018

