

**AGENDA ITEM: 11**

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Meeting	Cabinet Resources Committee
Date	4 <sup>th</sup> April 2012
<b>Subject</b>	<b>Landmark Library lease arrangements</b>
Report of	Cabinet Member for Customer Access and Partnerships
Summary	Following Cabinet's agreement to the Strategic Library Review, planning is underway to develop a new Landmark Library at the Arts Centre known as artsdepot. To facilitate this, Cabinet Resources Committee is asked to agree the extension of the lease of the premises to The Arts Depot Trust Limited.

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Officer Contributors	Bill Murphy, Assistant Director, Customer Services
Status (public or exempt)	Public
Wards Affected	Coppetts, West Finchley, Woodhouse
Key Decision	Yes
Reason for urgency / exemption from call-in	N/A
Function of	Executive
Enclosures	None
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## **1. RECOMMENDATIONS**

### **That the Committee**

- 1.1 Note progress in the development of plans for a Landmark Library with arts, cultural and children's specialism within the artsdepot site**
- 1.2 Endorse negotiation of an extended lease of the Arts Centre (known as artsdepot) with The Arts Depot Trust Limited on the terms as set out in section 9.13 of this report, subject to agreement in due course of an appropriate mechanism for the calculation of service charge**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet Resources Committee 20 May 2004 – item 7 - approved the granting of an under lease of the Arts Depot to The Arts Depot Trust Ltd on the terms outlined in the report and
  - (i) The relevant Chief Officer was given authority to make application to the Office of the Deputy Prime Minister for The Arts Depot to be under let to Arts Depot Trust Ltd on the terms outlined and
  - (ii) Subject to (i) being obtained, the Borough Solicitor was instructed to grant an under lease in a form to his approval.
- 2.2 Cabinet 26 July 2011 – item 6 – approved implementation of the Strategic Library Review, including the merger of Friern Barnet and North Finchley libraries into a Landmark Library, and continued negotiations with The Arts Depot Trust Limited ('the Trust') regarding the co-location and development of a new Landmark Library with arts, cultural and children's specialism within the artsdepot site.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The Council's Corporate Plan 2012 – 13 sets out how the authority will respond to the challenges facing Barnet over coming years. The report to Cabinet on 26 July 2011 which sought approval for the Strategic Library Review, set out the significant contributions which the library strategy will make to the corporate priorities and strategic objectives. These are summarised below.
- 3.2 *Better Services with Less Money*: the library strategy aims to provide better services with less money and is aligned with the strategic objectives to:
  - Create a more customer centric council that enables customers to efficiently achieve the desired outcomes
  - Manage resources and assets effectively and sustainably across the public sector in BarnetIn particular, the Council will seek opportunities to co-locate with other public services where appropriate, and make wider changes to the property network to provide good access.

3.3 *Sharing opportunities and sharing responsibilities:* the library strategy aims to develop a new relationship with citizens by promoting and providing opportunities for people to read, learn, find information and use library space for a range of activities and events. In particular, the merger of library services into a high-profile, high quality cultural facility will enable the service to reach new customers, with particular emphasis on targeting children and those with lower levels of literacy.

3.4 *A successful London suburb:* the library strategy aims to provide a high quality and engaging service, which supports a prosperous and thriving borough. In particular, the enhancement and increased sustainability of artsdepot will make a positive contribution to the local shopping area, and to making North Finchley a destination in its own right.

3.5 In July 2011 Cabinet agreed the Strategic Library Review, which set a clear direction for Barnet's library service. This included agreement of a recommendation to

*Endorse continued negotiations with the Arts Depot Trust regarding the co-location and development of a new Landmark Library with arts, cultural and children's specialism within the Arts Depot site.*

3.6 The Strategic Library Review includes the following assumptions:

- Achievement of £100,000 revenue saving in 2012/13 and £100,000 in 2013/14 arising from the merger of Friern Barnet and North Finchley libraries in artsdepot.
- Capital funding availability of £3million to deliver the strategy, derived from the disposal of library buildings declared surplus to requirements. In addition to the works at artsdepot, it is assumed that this funding would also enable the implementation of improved ICT infrastructure, and new models of library services elsewhere in the borough.

#### **4. RISK MANAGEMENT ISSUES**

4.1 There are a number of potential risks associated with the strategic library review. Those which are particularly relevant to the artsdepot/ Landmark Library are set out below, with mitigating measures.

4.2 The library strategy has been designed to deliver required efficiency savings which were not possible within the existing service model. The merger of Friern Barnet and North Finchley libraries into a new Landmark Library at artsdepot is designed to deliver £100,000 revenue savings in 2012/13 and a further £100,000 in 2013/14. Without such a clear medium-term strategy, reduction in spending would lead to an impoverished service which would not meet the diverse needs of Barnet's communities. Reactive service cuts each

year – for example reducing stock, staffing or hours – without a clear strategic foundation could lead to longer-term decline of the service, reducing access to services.

4.3 The report to Cabinet on 26 July 2011 identified that:

*There are risks associated with the creation of a new Landmark Library within the Arts Depot: development of a new partnership, use of space and financial and property implications. A partnership with the Arts Depot to develop a Landmark Library within the Arts Depot site would offer a range of benefits to Barnet residents, library users and users of arts and cultural services. This is a preferred option for service delivery, given the additional benefits this could offer to the public and its positive impact on the effective use of resources.*

*Any partnership agreement to develop this shared facility within the Arts Depot would require support from both the Council and the Arts Depot Trust. This agreement would need to: consider how the space can be best utilised to maintain the existing programmes at the Arts Depot and develop additional spaces and capacity; ensure that quality controls are in place to accommodate a successful library service within the centre; evaluate the capital implications of developing the new Landmark Library and ensure the developments can take place within budget; reach agreement on how the partnership would work to the benefit of all; offer options for how the arrangement can be formally agreed, including property-related negotiations, financial and legal implications; and establish a viable schedule to establish the new services. The Council will work with the Arts Depot to create effective ways to consult with Arts Depot customers and library user as plans for the new service develop.*

4.4 The Council will seek to enter into a partnership agreement with the Trust to address all of the above before it enters into any contractual commitment(s) for the redevelopment of the site.

4.5 A capital scheme of this scale carries its own risks in terms of budget, quality and timescales. The council is commissioning a feasibility study to identify outline designs for the scheme: these will be independently costed, including the allocation of appropriate contingency funding, to generate a robust programme budget. This will be used as the basis for bidding to Arts Council England, and for onward decision-making by the Council, as described in section 9.9 below.

4.6 Entering into a new partnership arrangement with any external body poses a degree of potential risk to the Council. This risk will be mitigated by:

- A Partnership Agreement to address all matters relating to space utilisation, quality controls, redevelopment programme plan, measures for joint agreement of specifications of requirements and signoff of contractual documents
- The establishment of an operational committee comprising members of libraries and artsdepot staff to oversee the delivery of services in shared areas of the building
- Regular progress reporting to the Portfolio Holder and artsdepot Board

- 4.7 Any risks associated with the re-negotiation of the lease will be mitigated by the close involvement of Property and Legal Services throughout the process.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Under the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
  - b) advance equality of opportunity between those with a protected characteristic and those without; and
  - c) promote good relations between those with a protected characteristic and those without.

The 'protected characteristics' referred to are: age; disability; gender reassignment; pregnancy; maternity; race; religion or belief; sex; and sexual orientation. The duty to eliminate discrimination also extends to marriage and civil partnership.

- 5.2 A comprehensive assessment of equalities impacts and risks of the Library Strategic Review was completed and considered with the report to Cabinet on 26 July 2011. Consultation and engagement took place with different groups representing all sections of Barnet's diverse communities, with particular focus on engaging with groups who have more complex service requirements.
- 5.3 The proposals in this report represent plans for implementation of policy already agreed by Cabinet in July 2011: as such no additional equalities impact assessment has been completed.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 **Finance:** The Strategic Library Review has been designed to deliver £1.41m savings from the libraries revenue budget. Significant capital investment is required to deliver the strategy, including the establishment of a Landmark Library at artsdepot. A capital fund of £3m has been established to invest in the library network. This £3m investment programme is wholly dependent on generating £3m from library asset disposal.
- 6.2 The Medium Term Financial Strategy identifies the following savings arising from the merger of Friern Barnet and North Finchley libraries into the artsdepot Landmark Library:
- 2012/13: Saving of £100,000
  - 2013/14: Saving of £100,000
- 6.3 Funding from the Mayor's Outer London Fund will be invested in the public realm around artsdepot during 2012/13-2013/14. A successful bid for funding will bring around £1.45m to the town centre to be invested in a number of improvements with a specific focus on the quality of the external environment and perception and visibility of artsdepot and proposed Landmark Library.

- 6.4 **Procurement:** There are no specific procurement implications arising from these proposals. If the Council were to proceed to implement the redevelopment at artsdepot, officers would seek support and advice from the procurement team to ensure full compliance with policies and procedures, and effective management of contracts.
- 6.5 **Performance and value for money:** The Landmark Library at artsdepot is designed to increase the number of library visits and decrease library revenue costs, thus reducing the cost per library visit and costs overall. The service will be designed to increase the use of libraries by key groups (ie children and those with low literacy levels).
- 6.6 **Staffing:** There are no specific staffing issues arising from the proposals within this report. Staffing issues arising from the implementation of the libraries strategy were addressed in the report to Cabinet of 26 July 2011.
- 6.7 **IT:** The library strategy includes a number of plans for the enhancement of library ICT infrastructure. The development of a Landmark Library at artsdepot will enable 21<sup>st</sup>-century standards of ICT to be planned from the design stage.
- 6.8 **Property and sustainability:** Following agreement to the detailed terms of the proposed lease, Property Services will seek any necessary consents from the superior landlord, or, if required, consent under section 123 of the Local Government Act 1972.
- 6.9 The merger of Friern Barnet and North Finchley libraries into a new Landmark Library at artsdepot is an important part of the library strategy's plans for increased sustainability of the library network. The co-location of facilities allows for the sharing of costs: provision will be made within the service charge arrangements for ongoing repairs and maintenance.

## 7. LEGAL ISSUES

- 7.1 As stated at paragraph 9 below, the lease of the Arts Centre building (known as artsdepot) was granted to the Council in November 2004. The permitted use of the premises is set out in the lease, and library services are not explicitly amongst the permitted uses. Therefore, consent of the Head Landlord would be required for the proposal.
- 7.2 In addition, any assignment and underletting of the Arts Centre, whether by the Council or the Trust, will be subject to the consent of the Head Landlord as required by the terms of the lease to the Council.
- 7.3 The majority of business tenants will enjoy security of tenure under Part II of the Landlord and Tenant Act 1954 (the Act). The protection given to tenants covered by the Act is twofold. First, a business tenancy will not come to an end at the expiration of a fixed term, nor can a periodic tenancy be terminated by the landlord serving an ordinary notice to quit. Instead, notwithstanding the ending of the contractual term, the tenancy will be automatically continued under s 24 of the Act until such time as it is terminated in one of the ways specified in the Act. Secondly, upon the expiration of a business tenancy in accordance with the Act, business tenants normally have a statutory right to apply to court for a new tenancy and the landlord may only oppose that application on certain statutory grounds (some of which involve the payment of

compensation by the landlord if the tenant has to leave). It is possible, in certain circumstances, for the landlord and tenant to contract out of the Act, but certain formalities must be observed.

- 7.4 As the Trust's occupation of the premises is a business tenancy under the Act, the Trust has a right to serve a notice on the Council before the expiry date of their underlease, requesting that the Council renew the underlease. The Council is required when the notice is served to serve a counter-notice on the Trust, either agreeing or refusing to extend the underlease. If the Council refuses to extend the underlease on the grounds that the Council requires possession of the premises in order to let/dispose of it as a whole; or that the Council intends to demolish/reconstruct the premises, or intends to occupy the premises, the Trust will be entitled to compensation from the Council for disturbance, once the Trust vacates the premises. The compensation is payable whether or not a court application is issued.
- 7.5 Local authorities are given powers under Section 123 of the Local Government Act 1972 (as amended) to dispose of land held by them in any manner they wish, including the grant of leases. The only constraint is that, except with the consent of the Secretary of State, a disposal must be for the best consideration reasonably obtainable.
- 7.6 Pursuant to a general consent, (the Local Government Act 1972: General Disposal Consent (England) 2003), the Secretary of State gave consent to a disposal of land otherwise than by way of a short tenancy by a local authority in England in the circumstances specified below:

"The specified circumstances are:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
- i) the promotion or improvement of economic well-being;
  - ii) the promotion or improvement of social well-being;
  - iii) the promotion or improvement of environmental well-being; and
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)".

## **8. CONSTITUTIONAL POWERS**

- 8.1 Constitution Part 3, Responsibility for Functions – Section 3, Responsibility for Executive Functions – All matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.
- 8.2 Constitution, Part 4, Council Procedure Rules, Management of Real Estate, Property and Land, paragraph 19 - All recommendations for approval of the sale price and other terms of disposal must contain a statement from the Chief Valuer or, if appointed, from suitably qualified external agents that the Council will obtain the best price which can reasonably be obtained or that there is

approval through the General Consent or that the consent of Central Government has been obtained or will be sought to enable the disposal of the property to proceed as recommended.

## **9. BACKGROUND INFORMATION**

9.1 In July 2011 Cabinet agreed the Strategic Library Review, which set a clear direction for Barnet's library service. This included agreement of a recommendation to

*Endorse continued negotiations with the Arts Depot Trust regarding the co-location and development of a new Landmark Library with arts, cultural and children's specialism within the Arts Depot site.*

9.2 The Strategic Library Review includes the following assumptions:

- Achievement of £100,000 revenue saving in 2012/13 and £100,000 in 2013/14 arising from the merger of Friern Barnet and North Finchley libraries in artsdepot.
- Capital funding availability of £3million to deliver the strategy, derived from the disposal of library buildings declared surplus to requirements. In addition to the works at artsdepot, it is assumed that this funding would also enable the implementation of improved ICT infrastructure, and new models of library services elsewhere in the borough.

9.3 Officers have proceeded to enter negotiations with the Trust which have been very constructive, and are in the process of commissioning a feasibility study for a redevelopment of the building to accommodate Landmark Library provision. It is anticipated that the feasibility study will be completed, and costed, by the end of June 2012.

### **Lease agreement**

9.4 The Council owns the Site known as Tally Ho Corner, North Finchley. The Council entered into a Development Agreement with Wilcon Homes Ltd in December 2001 for the development of the Site. Some of the obligations of the parties under the Development Agreement were as follows:-

- 1) Obligation on the Council to grant a Lease of the Site for a term of 999 years to Wilcon Homes Ltd/ or its successor/nominee. The Lease was granted in April 2002.
- 2) Obligation on Wilcon Homes or its successor to grant a lease of the Arts Centre (part of the Site) for a term of 125 years to the Council. The draft of the lease was agreed as part of the Development Agreement. The lease was granted to the Council in November 2004, with a commencement date of September 2004, at a peppercorn rent; the Council only being liable for service charges and business rates.

9.5 When the development of the Arts Centre was approved it was on the understanding that the Trust would have a 21 year under lease of the Arts Centre which, except for the lease length, would be on the same terms as those of the Council's superior lease.



- 9.6 Cabinet Resources Committee on 20 May 2004 authorised the grant of an underlease of the Arts Centre for 21 years, at a peppercorn rent to the Trust on the terms as outlined in the report. It was understood that, as the Trust would be entirely responsible for running the Arts Centre, that it could if required, grant sub-underleases to other organisations whose use would complement the operation of the Arts Centre.
- 9.7 The terms of the Underlease as authorised by Cabinet Resources Committee in 2004 has been agreed with the Trust, but the lease has not been completed. The length of the lease is 21 years from September 2004. Although the Trust has signed the lease, this has not been signed by the Council. The 2004 Cabinet Resources Committee authority was given subject to obtaining Secretary of State Consent to dispose of a property at less than the best consideration. From a recent valuation report provided by the District Valuer, the value of the lease to the Trust is below £2 million, so will fall within the General Consent.
- 9.8 The current proposal is for the Council to extend the length of the underlease to the Trust, subject to rights reserved to the Council, to provide library services within the building, the details of such provision to be set out in a schedule to the lease. The Trust has indicated their willingness to enter into a partnership agreement to establish a Landmark Library in the premises, subject to an extended underlease without a break clause.
- 9.9 The opportunity has arisen for the Trust to bid to Arts Council England for capital funding to enable the redevelopment of its facility. Arts Council England has informally indicated that such a bid would have a good chance of success if it were to be matched by
- Funding to achieve improvements to the public realm outside the building (already agreed through the Outer London Fund, see para 6.3 above)
  - Match funding from the Council related to costs arising from the incorporation of a Landmark Library in the building
- 9.10 The Trust has become increasingly successful in attracting local and regional audiences to its wide range of activities. As a result, space within its building is used increasingly intensively. In order to accommodate the quality and scale of Landmark Library described in the Library Strategic Review, it will be necessary to fundamentally review the layout of the building, and to create as many flexible spaces as possible. It is also proposed to seek to incorporate the building's corner retail unit, providing a cafe as part of a redesigned ground floor, to increase the attractiveness of the facility.
- 9.11 Officers believe that a redesign of this scale will make a significant contribution to the sustainability of both the Landmark Library and artsdepot, as well as delivering the objectives of the library strategy in the area. It is anticipated that a scheme of this scale will require investment beyond the level which could be afforded within the library strategy alone, and therefore the Arts Council England funding would be an important enabler for the scheme.
- 9.12 The application process for Arts Council England capital funding is understood to commence in June/ July 2012. Information relating to its capital funding programme on the Arts Council's website makes clear that funding of £1m - £5m is contingent upon

*'freehold (registered or unregistered) or a registered and assignable lease of at least 20 years without a break clause'.*

- 9.13 It is therefore proposed to agree with The Arts Depot Trust Limited:
- i) An underlease of the Arts Centre (known as artsdepot) to cover the period from September 2004 until a date 25 years after the completion of the works
  - ii) No break clause
  - iii) Peppercorn rent
  - iv) Assignable lease, subject to the formal consent of the Council and the head landlord
- 9.14 It is proposed that the Council will pay a proportionate service charge to the Trust in relation to its occupation of space in the building. This service charge will reflect the true costs of provision of services related to that occupation. It will not be possible to confirm the basis for calculation of that service charge until the design of the building has been agreed.
- 9.15 If the recommendation set out in section 1.2 of this report were to be approved, it is proposed to bring back a report to Committee in July outlining the proposals and associated costings arising from the feasibility study. That report will seek delegated authority to negotiate a partnership agreement with the Arts Depot, in consultation with the Portfolio Holder.
- 9.16 As the Strategic Library Review identified that a Landmark Library at artsdepot:

*...is a preferred option for service delivery, given the additional benefits this could offer to the public and its positive impact on the effective use of resources.*

no further options have been explored in the preparation of this report.

## **10. LIST OF BACKGROUND PAPERS**

- 10.1 Strategic Library review
- 10.2 Arts Council capital investment programme

<b>Cleared by Finance (Officer's initials)</b>	<b>JH/MC</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>POJ &amp; SWS</b>