

	<p style="text-align: center;">Assets, Regeneration and Growth Committee</p> <p style="text-align: center;">9th July 2014</p>
<p style="text-align: right;">Title</p>	<p>The Finches, Woodhouse College, Woodhouse Road, North Finchley, London N12</p>
<p style="text-align: right;">Report of</p>	<p>Lesley Meeks, Interim Assistant Director, Commercial Assurance, Procurement and Estates</p> <p>Val White, Commissioner, Childrens Services</p>
<p style="text-align: right;">Wards</p>	<p>Woodhouse Ward</p>
<p style="text-align: right;">Status</p>	<p>Public with accompanying exempt report</p>
<p style="text-align: right;">Enclosures</p>	<p>None</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Lesley Meeks, Interim Assistant Director, Commercial Assurance, Procurement and Estates. lesley.meeks@barnet.gov.uk</p> <p>Val White, Commissioner, Children's Services. val.white@barnet.gov.uk</p> <p>Judith Ellis, Manager, Property Services. Judith.ellis@barnet.gov.uk</p>

Summary

The Council holds a long lease with 78 years unexpired in a former youth centre of approximately 2,200 sq.ft situated within the Campus of Woodhouse College. Since 2001 the premises has been use by the Council for teaching A level music to schools across the borough. Last year the Council's music service was transferred from the Borough to BEAT, a charity set up for the provision of A level music education in Barnet.

From the commencement of the lease in 1993, the College have not charged a service charge for the running costs of the building which they are entitle to charge and they have refurbished the premises at their expense.

When BEAT was established it was assumed that the Council owned the premises they occupied and no provision was made in the agreement with BEAT for recovery of the running costs of the building.

Negotiations have taken place with the College and it has been agreed that the lease of The Finches be surrendered by the Council, in return for BEAT being offered a 10 year contract for the provision of music services on the terms set out in paragraph 5.2 below. The current service charge demand to July 2014 of approximately £88,000 will be waived and BEAT will not be charge rent or service charge. The premises will be maintained to a standard suitable for use by BEAT. The Council is to have the right to nominate another music provider on the same terms as the college will entitle BEAT to.

Recommendations

- 1. That the existing lease of The Finches be surrendered by the Council and the entire service charge demand be withdrawn by Woodhouse College, in return for BEAT being offered a 10 year contract for the provision of music services by Woodhouse College in accordance with section 5.2.1 and 5.2.2 of this report. The Council will have a right to nominate another music provider on the same terms as BEAT will be entitled to if BEAT cease their provision of music teaching.**

1. WHY THIS REPORT IS NEEDED

- 1.1 This report is about the surrender of a long leasehold interest in premises occupied by BEAT which the Council is legally obliged to pay the running costs of, both back dated to 2006 and in the future. The details of these costs are set out in the exempt section of this report. These costs cannot be recovered from the occupier of the building, BEAT, which provides the Council's A level music service. The report is needed to achieve the surrender of the lease and for terms for a contract between BEAT, the College and the Council to be entered into concerning the provision of music services in the borough.
- 1.2 When Woodhouse College was transferred freehold from the Council to Woodhouse College in accordance with the Further and Higher Education Act 1992, the Council agreed with the College that the Finches Youth Centre, which had been run by the Council's Youth Services since 1967, be retained by the Council on a 99 year lease which commenced in April 1993 at a peppercorn rent (78 years unexpired). The lease also provided that the Council should have a right to use the College's gymnasium and floodlit hard surfaced sports court.
- 1.3 The lease terms make the Council responsible for repairs and maintenance of the premises and there is a service charge payable for rates, utility costs, cleaning, rubbish removal and grounds maintenance. These charges are set out in the exempt section of this report. Any refurbishment of the premises would also be the responsibility of the Council.

- 1.4 In 2001 it was decided that Youth Services should no longer use the Finches and their use was changed to the provision of teaching A Level music with pupils visiting the premises for music tuition from across the borough.
- 1.5 Last year, the provision of this music tuition was transferred from the Borough to BEAT, a charity set up for the provision of A level music education in Barnet. BEAT is financially independent from the Council. Property Services were not consulted concerning this transfer and Woodhouse College had forgotten about the existence of the lease.
- 1.6 A valuation of the Council's leasehold interest in the premises is contained in the exempt report.
- 1.7 From 1993 to 2013 no demands for the service charge made by the College and over recent years the College has refurbished the premises to a good standard, which was not their responsibility to deal with and which would have had to be undertaken at the Council's cost. In May 2013 the College approached the Council with a proposal to spend about £200,000 to install specialist music technology equipment in part of the building. As part of those considerations they realised the existence of the lease.
- 1.8 Whilst the College was prepared to make the expenditure on the installation with BEAT in occupation, they were concerned that under the lease the council could assign their interest to a third party who would benefit from their investment. They proposed that the Council surrendered their lease at nil consideration to protect this position and that they were paid the service charge due in accordance with the lease terms. The College also invoiced the Council for past service charges. As a result the lease was examined and the accounts and service charge verified by Property Services and reconciled with the lease. The service charge sum due in accordance with the lease is referred to in the exempt report, together with the amount of the College's service charge demand.
- 1.9 The proposal was unacceptable to officers of the Council, as the surrender of a valuable interest did not represent best value for the council.
- 1.10 BEAT have been consulted as to whether they are in a financial position to take over the lease liabilities and they have insufficient funds to do so. If they were to increase their charges to enable this, the numbers of their students would decrease, causing them to become financially unviable.
- 1.11 Negotiations have taken place with the College and the outcome is that if the Council surrenders its lease of The Finches, the College will offer a contract with BEAT and the College for the provision of Advanced Level Music, Advanced Level Music Technology or other post 16 music courses as agreed by BEAT and the College to be carried out borough wide. Heads of Terms for the contract have been seen by BEAT and they generally reflect the premises requirement of BEAT to provide music services for the Borough and for the College.

- 1.12 The contract between BEAT and the College will run for 10 years. If BEAT were to withdraw their courses, (i.e. quality problems, ceasing to operate or insolvency) then the Council would have the right to nominate an alternative provider to continue the lease on the same basis, offering the same courses, up to the expiry date of the original contract. It is anticipated that the Council's lawyers will advise that the Council should be a party to this contract to enable the nomination rights to take effect.

2. REASONS FOR RECOMMENDATIONS

- 2.1 To terminate a financial outgoing of the Council and to secure the provision of the Borough's A level music service.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 To assign the lease of the premises to BEAT. This would mean that BEAT would be responsible for paying the service charge and assuming financial responsibility for the building. BEAT have said that they cannot increase their charges to students sufficiently to cover the service charge. It would also mean that if BEAT were to fail the Council would have to take over the running costs of the building whilst a suitable alternative provider of music services was found
- 3.2. To sublet the premises to a community group. Although rent would be obtainable for such a sub letting and the sub tenant would be responsible for the service charge, such a letting is not likely to be a sound financial proposition for the Council. Although some financial commitment would be removed from the Council, BEAT would lose their premises to the detriment of music tuition in the borough.

4. POST DECISION IMPLEMENTATION

- 4.2. Following approval of this report, there will be a simultaneous completion of a contract between BEAT, the College and the Council and the surrender of the Council's lease of the premises, to ensure the continuity of the provision of music services both in the first place to BEAT and if they were to fail, an alternative service supplier.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2013-16 has a strategic objective to "promote responsible growth, development and success across the Borough"
- 5.1.2 The Council's Estates Strategy 2011-2015 sets out our commitment to continually review the use of council assets so as to reduce the cost of accommodation year on year.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The terms of the surrender of the existing lease will cause the Council to lose a leasehold asset, but the service charge payments which the Council is legally bound to make in accordance with the lease terms will be saved, together with responsibility for repairs and upgrades of the accommodation if the building remains in the Council's ownership and occupied by BEAT. The financial details of the costs arising from the current lease and the opportunity cost of the surrender are dealt with in the exempt part of this report.
- 5.2.2 However the deal is recommended because BEAT have no resources to step into the Council's shoes and it is important that music services continue to be provided for schools in the borough. In addition, if BEAT no longer wished to provide these services for any reason, or the quality of their services fell to a standard unacceptable by the College, the Council will have the ability to put another music service into the premises as long as they are able to provide the scale and complexity of the services provided by BEAT.

5.3 Legal and Constitutional References

- 5.3.1 S123 of the Local Government Act enables a council to dispose of land and property held by them in any manner they wish.
- 5.3.2 Statute Law, Circular 06/03 Local Government 1972 General Disposal Consent (England) 2003, has provisions to cover the subject circumstances, namely, disposal of land for less than best consideration that can be reasonably obtained. The terms of the consent mean that specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the improvement of the social, environmental or environmental well being of its area. The under value is not to exceed £2m.
- 5.3.3 In this case the social wellbeing of its area is the provision of music services across the borough by BEAT and with the ability of the Council to introduce another such provider if BEAT wished to cease this provision.
- 5.3.4 Council Constitution, Responsibility for Functions set out the terms of reference of the Assets Regeneration and Growth Committee, including "Asset Management – all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council".
- 5.3.5 Council Constitution, Management of Assets, Property and Land Rules, Appendix 1, Table A sets out the authorisation thresholds for asset acquisition or disposal. Paragraph 8.1 states that "the method by which an Asset is acquired or disposed of should be based upon market testing to ensure that Best Consideration is obtained wherever possible". In the circumstances of this case there are few or none providers of specialised music services in the borough and market testing by publicly seeking bids for these leasehold premises is not practical. Furthermore, it would give great uncertainty and

public displeasure if the specialised, high quality service provision of BEAT was perceived to be under threat.

5.4 Risk Management

- 5.4.1 The Council faces the risk of unbudgeted expenditure if action is not taken. If the Council had not reached agreement with the College as set out in this report and it had required BEAT to take a surrender of its lease it would have been most likely that the provision of music services in the borough would have ceased. The proposals set out in this report reduce these risks to a very low level and the risks will be removed entirely on completion of the surrender and the tripartite contract agreement for the provision of music services.

5.5 Equalities and Diversity

- 5.5.1 Under the Equality Act 2010, the Council 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; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.
- 5.5.2 At this stage the proposal does not raise any issues under the Council's Equalities Policy and does not have a bearing on the Council's ability to demonstrate that it has paid due regard to equalities as required by the legislation. No immediate equality impacts are anticipated as a result of this proposal. There may be a future equalities impact for example, on staff, community partners or customers should BEAT decide to vacate the building. This impact will be assessed and considered in decision making at the appropriate time as proposals take shape to allow members to take account of this in decision making.

5.6 Consultation and Engagement

- 5.7.1 None

6 BACKGROUND PAPERS

None

6.1 PREVIOUS DECISIONS

- 6.1 The last decision will have been to take a long lease of the subject premises when the whole College was transferred out of the ownership of the Council under the Further and Higher Education Act 1992. A copy of this decision is not available and given the 22 year time gap since the decision was taken, it is not relevant to the current considerations.