

BROMSGROVE DISTRICT COUNCIL

RECORD OF DECISION TAKEN UNDER URGENCY PROCEDURES

Subject: Release of £120K from balances to enable the purchase of assets associated with the Artrix and other associated costs

Brief Statement of Subject Matter:

The freehold of the Artrix building ("the Building") is held by BDC on trust for the Holding Trust – which is a charitable trust registered with and regulated by the Charity Commission. BDC is the legal entity that is listed at the land registry, but it can only deal with the Building on direction from the Holding Trust. The Holding Trust is constituted of up to six trustees appointed by the Council and two appointed by the College.

The Building was leased on a 21 year term in April 2005 to the Operating Trust, which was re-constituted as a charitable company in June 2010. On giving the lease, the Holding Trust delegated all responsibility for running the building to the Operating Trust. There was no separate management agreement or operational specification because the Operating Trust had been set up with charitable objects broadly matching those of the Holding Trust. The charitable objects of the Operating Trust therefore provided the necessary guarantees over appropriate use of the Building. The Holding Trust had no power or responsibility under the lease to interfere with the operation of the building (unless activities at the building were outside of those allowed under the lease) or examine the financial position of the Operating Trust. On dissolution of the Operating Trust the lease is dissolved and full ownership of the building reverts to BDC (on behalf of the Holding Trust). Although BDC is the legal owner it can only deal with the Building as directed by the Holding Trust.

The Building was, under the lease, insured by BDC and this cover remains in place. Maintenance responsibility continues to sit with the Operating Trust, but the lease allows BDC as landlord to step in if it has concerns about maintenance.

BDC's acting Head of Leisure has met with the insolvency practitioner to ensure that in advance of the Holding Trust meeting its position and the Building are protected. BDC will continue to support the Holding Trust in working with the insolvency practitioner if the Holding Trust wishes.

Officers are exploring the implications with respect to business rates, third party liabilities, maintenance responsibilities etc. of the Holding Trust directing BDC to take possession of the building in advance of dissolution of the Operating Trust.

The Insolvency process is ongoing and on dissolution of the Operating Trust, the Holding Trust will be advised moving forward although the current closure of theatres and cinemas on direction of the government means that business and service continuity is not a consideration.

Once the lease is dissolved, the Holding Trust will then have to decide what to do with the Building. The Holding Trust is a charitable trust and must apply its income and assets for one or more of the following objects:

To advance education in and increase appreciation and understanding of all forms of the arts amongst members of the public including (without limitation) the arts of drama, dance, music and performance and visual arts generally in particular but without limitation:-

by presenting, producing, organising or promoting or procuring to be presented, produced, organised or promoted either alone or with others performance of music, drama, dance or any other form of arts; and

by providing organising or promoting classes and courses in drama, music, painting or any other form of the arts.

To provide or assist in the provision of facilities for recreation or other leisure-time occupation with the object of improving the conditions of life for members of the public in the interests of social welfare.

The Building, or any monies raised from dealings with it, must be applied for these purposes.

There are therefore significant decisions to be made by the Holding Trust in the coming months.

Decisions about the future of the Building rest with the Holding Trust rather than the Council, but the Council can provide monetary support to the Holding Trust and in the interests of fulfilling the Trust and other obligations.

BDC's Acting Head of Leisure has confirmed that it is far more likely that the Holding Trust will be able to enable the objects of the Holding Trust to be fulfilled with the assets of the building in situ.

It is therefore proposed that the Council support the Holding Trust by making an offer to the Insolvency Practitioner for the assets to enable this to happen.

The Council has sought external advice on the value of the assets.

In addition the Holding Trust will require legal and other professional support to enable it to fulfil its Trust obligations moving forward,

It is therefore proposed that the Council release £120k from balances to fund the purchase of the assets the provision of independent Legal and other professional advice to the Trust and funding for the ongoing maintenance, insurance and security of the building. Balances at 31/3/2019 were £4.3m with the minimum level required of £1m.

Decision: Council

Date: 29th May 2020

RESOLVED:

That £120K be released from balances to enable a bid to be made by the Council to the Insolvency Practitioner for the Assets associated with the Artrix as detailed in the Insolvency schedule and within the financial parameters set by the Councils external independent valuer, for the provision of independent legal and other professional advice to the Holding Trust and for the purpose of insuring, maintaining and securing the Artrix building.

Grounds for Urgency:

The deadline for offers for the purchase of the contents of the Artrix following its closure, is 29th May 2020 and therefore falls before the next scheduled meeting of the Council.

DECISION APPROVED BY:

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Chief Executive – K Dicks

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Dated

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Section 151 Officer - J Pickering

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Dated

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Monitoring Officer – C Felton

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Dated

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Leader – Cllr K May

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Dated

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Chairman, Overview & Scrutiny Board
Cllr M Thompson

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Dated

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Chairman – Cllr R Laight

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Dated