

# **Cherwell District Council**

## **Council**

**17 December 2018**

### **Purchase of The Mill Arts Centre**

## **Report of Interim Executive Director: Finance and Governance**

This report is public

### **Purpose of report**

To establish a budget in order to complete the transfer of The Mill Arts Centre from Oxfordshire County Council to Cherwell District Council following the Executive's decision in July 2018 to negotiate the purchase of The Mill Arts centre building in Banbury. It was also agreed that there would be an increase in revenue support to the Mill Arts Centre Trust in the short term to enable The Trust to meet its commitment following the cessation of the financial relationship with Oxfordshire County Council.

Following on from the purchase, there will be a need to carry out a full investment options appraisal on the site to report back to members on the scale and scope of potential investment in the Towns cultural facilities to create a sustainable venue for the Town.

This will be subject to further reports once we are able to work with the Trust on those options. An internal officer working group will be established to take this work forward.

### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To approve the expenditure of £1 to secure the transfer of The Mill Arts Centre from Oxfordshire County Council to Cherwell District Council in line with the Executive decision of July 2018.
- 1.2 To agree to the establishment of a revenue budget of £50,000 to cover costs of transition funding and arrangements in 2018/19 to be funded from general reserves. Future funding will be considered when setting the budget and medium term financial plan in February 2019.
- 1.3 To note that immediate remedial works (expected early in 2019/20) in the region of £250,000 may be required, with further phases of works due later in 2019/20 or the 2020/21 to ensure that the building is fit for purpose and will be subject to detailed capital proposals as part of the budget setting process and medium term financial plan for 2019/20 to 2023/24

- 1.4 To note that an officer working group will be established to establish the options and Business case for any further investment into the site to ensure that the Trust is financially more sustainable in the medium to long term
- 1.5 To note that the offer to acquire the asset is subject to a restrictive covenant from Oxfordshire County Council to ensure that at least 80% of the site is used for cultural purposes otherwise state aid applies
- 1.6 To delegate the final agreement for the legal agreement to transfer the asset to the Monitoring officer for Cherwell District Council in consultation with the Interim Executive Director of Finance and Governance.

## **2.0 Introduction**

- 2.1 The Mill Arts Centre is the only dedicated, multi-arts, space in Banbury and the surrounding area. Managed by the Mill Arts Centre Trust (MACT), it has an ambition 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 as a whole'.
- 2.2 The arts centre is accommodated within a 4 storey converted Mill building, opposite Castle Quay shopping centre and close to The Museum and Sports Centre; which are all owned by Cherwell District Council. The Mill is used as offices, meeting rooms, artists' studios, gallery and bar facilities and has been extended to the rear to create an auditorium space seating around 230. Until 2013, The Mill was directly run by Oxfordshire County Council.
- 2.3 The Mill building is currently owned by the county council and leased to the 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. Cherwell District Council currently provide grant support in region of £42,000 per annum.
- 2.4 This was the only arts centre venue owned by the County Council, others within Oxfordshire are held by district councils. It is a not a statutory function for the county council and arts funding was ceased as part of savings linked to service and resource planning in 2013 but it was recognised that this was important provision for Cherwell and the wider area so current arrangements remained in place until the expiry of the lease in March 2017.
- 2.5 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 the Trust and is the reason why the county council has not withdrawn its financial subsidies sooner.
- 2.6 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.

- 2.7 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.
- 2.8 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 if the Trust was unable to secure significant external funding. To attract external funding the Trust needs to be in a position to negotiate a longer lease as many grant giving bodies minimum requirements are that an organisation needs to have a stable tenancy in place.
- 2.9 Cherwell District Council recognises the importance of maintaining good quality arts and community space in Banbury for the benefit of those in the immediate area and across a broader area. By acquiring the site we would be able to put in the necessary arrangements to support the Trust in moving forwards with plans to consider how to sustain their service on a longer term basis. Given its strategic placement within an area that we have already invested regeneration resources into (Spiceball Leisure centre, Castle Quay and investment properties in the Canalside area), this also makes sense for us to ensure that the benefits of this centre can be realised for Banbury and wider Cherwell area.
- 2.10 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 was put in place from 1 October 2018 whilst the final negotiations on transfer of the asset were resolved. The three parties (District and County Councils and the Trust) have remained in contact throughout this period whilst we finalised details.

### **3.0 Report Details**

- 3.1 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. An accompanying condition survey of the property outlined necessary remedial works and an approach that would need to be undertaken to bring the building back into good repair. The phasing of these works will need to be considered as part of the 2019/20 budget setting process and a comprehensive programme of works put in place. This condition survey was also considered when calculating the value of the asset to be transferred.
- 3.2 Savills opinion of market value of the freehold interest, in its current condition, with a restriction on use for the building to be only used for Community & Cultural Purposes is £275,000.
- 3.3 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, it is proposed that we purchase the Mill from the county council for £1.

- 3.4 The acquisition costs of the property for £1 reflects the fact that there will be further investment involved in Cherwell District Council taking on the property. In 2018/19 there will be transition costs in the region of £50,000 for costs incurred both directly to the council and some that we will needed to be paid towards the Trusts costs. It is proposed that these are funded through general reserves.
- 3.5 It should also be noted, that the remedial works that will be required will begin in 2019/20 and will be included as part of the capital programme and bids during the budget setting process. It should be noted that these will be additional costs to those already within the medium term financial plan that was agreed in February 2018.
- 3.6 Whilst the ongoing asset management arrangements will be managed by our Property and Investment team, to ensure that we work in partnership with the Trust to develop options around longer-term financial sustainability and minimise any ongoing subsidy of MACT, it is proposed that a small working group of officers are formed to oversee this work. This would comprise of the Assistant Director of Wellbeing, the Assistant Director of Property, Investments and Contract Management alongside colleagues from areas such as finance and legal as and when required.
- 3.7 By taking on this asset and working in partnership with MACT, the council has an exciting opportunity to secure a longer-term future for arts and culture within Banbury, in a key location in our overall vision for Banbury and Cherwell. By working in partnership with Oxfordshire County Council and with MACT to get us to this point we have had a positive approach to securing these important services for our residents and visitors.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 In order to acquire The Mill Arts Centre and fulfil the Councils ambition to maintain and grow arts provision in Banbury, Cherwell District Council must agree an In year expenditure not identified in this year's budget of £1 for the asset and up to £50,000 for transition costs.
- 4.2 The market value of the asset is £900,000 if it were unencumbered and in good repair but by applying a restrictive covenant to ensure that cultural services remain in place and due to the condition of the building, the value reduces to £275,000. The District Council also needs to recognise that capital monies will need to be set aside in future years for remedial works.
- 4.3 The agreement represents a way for the cultural and arts services provided by MACT to be protected but also importantly, to put them in a better position to apply for external funding with a longer lease. These lease arrangements between MACT and Cherwell District Council will need to be agreed once this transition has taken place.

## **5.0 Consultation**

- 5.1 Oxfordshire County Council and MACT have been working together in partnership to resolve and secure the longer-term future for the centre throughout this project. Continued engagement will be vital for the next step in the process which will be considering options of how to ensure the centre is able to be placed on a more secure financial footing for the longer-term.

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Not to take on the asset from Oxfordshire County Council. This was rejected on the basis this was highly likely to see the loss of the only arts and culture centre within the Banbury and surrounding area.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 The purchase of the asset for £1 can be funded through our current resources. It needs to be recognised that the asset value for this property reflects the restrictive covenant that will be placed on the asset and also reflects the fact that the property needs remedial works to be undertaken. The value of the asset is £275,000.
- 7.2 In 2018/19 additional costs for transition issues will need to be set aside of approximately £50,000 and these will be funded from general reserves.
- 7.3 It is recognised that there are remedial works that will be required to the building early in the new financial year of at least £250,000 with further works to follow. These will need to be included in the budget setting process for 2019/20 that concludes in February 2019.
- 7.4 To ensure the financial sustainability of the centre going forwards there may be a requirement to consider further investment in the site through the capital programme but this would have to be subject to a future business case. It is expected that once MACT have a longer term lease that they would be able to apply for grant funding which they would not have been able to do whilst their future tenancy arrangements remained unresolved.

Comments checked by:

Kelly Watson, Assistant Director Finance and Procurement  
0300 003 0206, [Kelly.watson@cherwellandsouthnorthants.gov.uk](mailto:Kelly.watson@cherwellandsouthnorthants.gov.uk)

### **Legal Implications**

- 7.5 The county council has sought its own legal advice in terms of the disposal at an undervalue which would be the case if Cherwell were to acquire the asset for £1.

- 7.6 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.
- 7.7 It is felt that the Mill Arts Centre would fall within the General Consent.
- 7.8 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.
- 7.9 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).

Comments checked by:

Nick Graham, Director Law and Governance, 0300 003 0106

[Nick.Graham@cherwell-dc.gov.uk](mailto:Nick.Graham@cherwell-dc.gov.uk)

### **Risk Implications**

- 7.10 There are risks associated with the purchase of any asset. In purchasing an asset of this nature, the risks are primarily financial and reputational and must be weighed against the impact the potential loss of the facility could have on the town and the wider district. Significant due diligence has been undertaken including the commissioning of a joint valuation report and condition survey of the property. This ensures that we have mitigated the risks of not fully understanding any ongoing liabilities related to maintenance of the building going forwards. The Council will need to ensure that sufficient resources are set aside to support the ongoing management of the asset which will be undertaken by the Property and Investment team who manage the Councils asset portfolio.

Comments checked by:

Hedd Vaughan-Evans, Assistant Director: Performance and Transformation

[Hedd.vaughanevans@cherwellandsouthnorthants.gov.uk](mailto:Hedd.vaughanevans@cherwellandsouthnorthants.gov.uk), 0300 003 0111

## **8.0 Decision Information**

### **Wards Affected**

All Banbury Wards

## Links to Corporate Plan and Policy Framework

Match with corporate objectives of Thriving Communities and Wellbeing and a District of Opportunity and Growth

### Lead Councillor

Councillor Barry Wood, Leader of the Council

### Document Information

Appendix No	Title
N/A	None
Reference Papers	
Executive report July 2018 – exempt report	
Background Papers	
None	
Report Author	Adele Taylor, Interim Executive Director of Finance and Governance
Contact Information	0300 003 0103 <a href="mailto:adele.taylor@cherwellandsouthnorthants.gov.uk">adele.taylor@cherwellandsouthnorthants.gov.uk</a>