

DRAFT/

EDUCATION CULTURE AND SPORT COMMITTEE

28TH MARCH 2012

COMMUNITY CENTRES

2. The Committee had before it (1) article 6 of the minute of its meeting of 23 February 2012 at which time it had been agreed, upon consideration of a report by the Director of Education, Culture and Sport on community centres, that the management agreement and lease be the subject of mediation between representatives of the community centres and Aberdeen City Council with the objective of reaching agreement and reporting the outcome to a special meeting of this Committee; and (2) a further report by the Director in these terms, presenting the management agreement and lease for approval, outlining the areas which remained unresolved at the conclusion of the mediation, and explaining the implications for the Council of amending the agreements in the manner being requested by community centre representatives.

Appendices to the report included the mediation Heads of Agreement, the latest versions of the management agreement and lease, and letters from the Director of Social Care and Wellbeing and Grampian Police highlighting the need for the agreements between the Council and community centres to take cognisance of child protection responsibilities for volunteers.

The report recommended:-
that the Committee –

(a) notes the mediation Heads of Agreement, and considers the requests from the community centre representatives that (i) that the cost of personal and legal liability insurance cover is provided by the Council, (ii) that the provisions within the agreements for the Council taking legal action against the management committee be removed, (iii) that the requirement for a mutual indemnity in relation to breaches of data protection is removed, (iv) that the ability of the Council to terminate the management agreement in the event of late payment by a community centre is removed, and (v) that the leases and management agreements should be for a duration of twenty years. Decisions in respect to these issues need to consider the following:

- (i) The total cost to the Council would be in the region of £25,000. There is no budgetary provision within Education, Culture and Sport to meet this additional recurring cost, therefore if the Committee wished to agree to the principle of this additional funding, the request would require to be referred to the Council meeting on 4 April 2012.
- (ii) If these provisions are removed then it will limit the Council's ability to fully recover any losses which it suffers as a result of certain breaches of the Agreement by a

Community centre. These cannot be quantified at this time as it will depend on the nature of the breach and the losses which flow from it. If the Committee wished to agree to the removal of this provision, due to the potential financial implications, the request would require to be referred to the Council meeting on 4 April 2012

- (iii) If this provision is removed then it will prevent the Council from recovering a fine or damages awarded against the Council in respect of a data protection breach results from and act or omission on the part of a community centre. This cannot be quantified at this time, however the level of fine being imposed by the Information Commissioner is increasing and would be dependent upon the nature of the breach. If the Committee wished to agree to the removal of this provision, due to the potential financial implications, the request would require to be referred to the Council meeting on 4 April 2012.
 - (iv) If this ability is removed then it would reduce the incentive for Community centres to pay the Council promptly which will impact on the Council's cash flow and lead to increased administrative costs in terms of pursuing outstanding amounts. If the Committee wished to agree to the removal of this provision, due to the potential financial implications, the request would require to be referred to the Council meeting on 4 April 2012.
 - (v) The financial implications of this are as yet unquantifiable, but would be expected to run into many millions of pounds, and therefore would require to be referred to the Council meeting on 4 April 2012. To ascertain the costs of this decision would require additional budget of approximately £100,000 (not within existing budgets) for full condition surveys to be carried out in respect of each building (this would also require to be referred to Council meeting on 4 April 2012). To offer a lease of 20 years duration could be considered as a disposal at less than market value (under "The Disposal of Land by Local Authorities (Scotland) Regulations 2010"), so such a decision would require to be referred to Full Council meeting on 4 April 2012;
- (b) agrees the proposed management agreement and lease as set out in Appendices B & C, subject to delegating final refinements (including the schedules on janitorial arrangements and community schools) to the Head of Legal and Democratic Services, in consultation with the legal representative of the Community centres, and the Convener and Vice Convener of the Education, Culture and Sport Committee;
- (c) notes that the content of the management agreement assumes that the council will be able to meet its requirements for the provision for community-based learning through a future decision that the community wings within 3Rs venues will remain within the responsibility of the Council;

- (d) agrees that until such time as the management agreement is signed, those management committees which continue to work towards becoming leased, will continue to receive a pro rata transition grant equal to the value of the Development Grant, paid on a monthly basis;
- (e) agrees that the Council will not require community centres to offer residents a discount on charges as part of the Residents' Discount Scheme; and
- (f) seeks further reports on the progress of signing community centres up to the Management agreement.

In accordance with the decision at article 1 above, the Committee then heard from the deputations:-

(A) Paul O'Connor

Mr O'Connor expressed thanks to the officers who had been involved in the mediation process; requested that all community centres be allowed to sign the management agreement together; reiterated the request for a 20 year lease for centres incorporating a comfort clause allowing the Council to terminate the lease with a Committee decision to that effect; and listed clauses within the management agreement to which amendments were still being requested.

(B) Powis Community centre

Mr Mess asked the Committee to consider meeting the costs of the community centres' liability insurance and explained the reasons for this request. Reverend Cowie requested that a 20 year lease be given to centres, referred to the child protection requirements within the management agreement, suggesting that this be replaced with the appointment of a child protection officer within each centre to train volunteers on child protection; and asked for further time to allow community centres to consider the lease.

(C) Aberdeen Community Learning Centres Forum

Mr D'Arcy thanked officers for their role in the mediation process and expressed the view that the management agreement was still within the control of the Council, placed too much responsibility on centre volunteers, and could have been improved upon if additional funding had been available. Mr Allan outlined his own experience of volunteering within a community centre, appealed for consistency for all centres and a 20 year lease, and requested that employees were not prevented from being officer bearers. Mrs Mackland outlined the difficulties with securing management committee volunteers, and suggested that the additional burden of paperwork was unhelpful.

(D) Woodside Community Centre

Mrs Davidson referred to the child protection responsibilities of management committee volunteers and the need for vigilance to be exercised at all times in this role; and explained that the management agreement and lease were confusing for some volunteers, as well as being too onerous.

Members of the Committee asked questions of all deputations.

The Committee also heard from officers in response to questions:-

- (1) The General Manager (Asset Management) advised that there was no existing specific budget to allow the maintenance costs of community centre buildings to be met by the Council other than the corporate repair and maintenance budget; that a property maintenance schedule would be individual to each centre, the requirements for each being very much dependent on the lifespan of the buildings; that a 20 year lease and clause allowing the Council to terminate was possible, subject to compliance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010; that condition surveys of community centres would be undertaken by Council staff for a lease of up to five years, beyond which it would be necessary to procure external services due to the more onerous nature of the task and the increased risk to the Council; and that the figure of £100,000 for procuring these services set out in the report was not exaggerated as it must always be assumed that a lease will run for its maximum term notwithstanding any termination clause.
- (2) The Legal Manager (Policy and Procurement) advised that insurance cover for individual community centre volunteers would be unlikely to include criminality and gross negligence although it would be for centres to take their own advice on this; in terms of the requirements for competitive tendering procedures to be followed by community centres, that the Council needed to ensure that these were transparent in view of the fact that this involved public funds; in respect of PVG checks, that the organisation performing these was restricted in terms of the sharing of results with a third party, in this case a community centre; that a longer lease would increase the repairing obligations on the Council; that the management agreement as drafted ensured that the Council would compensate community centres for any data protection breach for which it, the Council, was liable, and vice versa; and that any tenant could seek a variation of lease but that a 20 year lease was potentially fettering the discretion of the Council, particularly as no capital investment would be sought in return. Lease durations were generally dependent on the investment being made by the tenant over the lifespan of the lease.
- (3) The Head of Communities, Culture and Sport indicated that the costs of officers undertaking PVG checks was a fresh issue but could be looked at; that there were statutory requirements on the Council to deliver community education and this should form part of any decision on community centres, as should the city's 3Rs estate; that a report to the next meeting would look in more detail at the allocation of hours from within 3Rs buildings; that the term of lease for community centres should be considered within the context of the Council's Service Asset

Management Plans and the review of the school estate; and that a 10 year lease would not improve the position for community centres looking to secure external funding, any more than a 5 year lease would.

- (4) The Service Manager (Communities) advised that service level agreements would need to be put in place with community centres for the provision of childcare schemes to ensure compliance with the requirements of the Care Inspectorate and the Scottish Social Services Council, and this was currently being negotiated with management committees; that a 20 year lease would tie the hands of the Council, particularly when considered within the context of the school estate; that the approach being taken by other local authorities was community ownership of assets.

During questions to officers, Councillor Yuill, seconded by the Convener, moved that Standing Order 10 be suspended to enable one of the deputations to respond to a question from a member of the Committee.

On a division there voted:- for the procedural motion (18) – Convener; Vice-Convener; Councillors Allan, Blackman, Boulton, Cooney, Donnelly, Greig, Laing, Leslie, McCaig, MacGregor, May, Reynolds, Robertson, Townson and Yuill; and Mr Alex Nicoll; against the procedural motion (1) – Mr Grant Bruce; absent from the division (1) – Councillor Young.

The procedural motion was carried and Paul O'Connor responded to a question from the Committee.

The Committee received advice from the Head of Legal and Democratic Services and the Legal Manager (Policy and Procurement) in respect of the revised proposals:-

- (1) the Council could face challenge that it had fettered its own discretion, if a 10 year lease were to be implemented;
- (2) that whilst there was provision to allow the Council to terminate a management agreement with 12 months' notice if certain criteria were met, eg a change in Council policy, it would be a matter of satisfying one of these conditions which would be entirely dependent on the circumstances at the time.
- (3) that limiting the Council's ability to take legal action against a management committee to recover losses incurred by the Council was contrary to legal advice. The recommendation within the report was consistent with legal advice provided to date, and would protect the Council's interests.

The Convener moved, seconded by Councillor Cooney:-
that the Committee –

- (a) note the mediation Heads of Agreement and thank both the community centre representatives and officers for their contribution to the mediation process;
- (b) in relation to the draft management agreement and lease attached to the report, agree:-

- (i) that the Council meet the costs of the community centres' personal and legal liability insurance cover; and refer consideration of the financial implications to Council on 4th April;
 - (ii) to refer to Council on 4th April for consideration those provisions within the Agreement which, as drafted, enable the Council to take legal action against a management committee; and, in this connection, to instruct the Head of Legal and Democratic Services to provide advice to Council on the implications of it limiting the extent of such legal action to the equivalent or less than the value of the assets of the community centre except in the cases of criminality or gross misconduct;
 - (iii) to retain the provision within the management agreement which requires a mutual indemnity in relation to breaches of data protection;
 - (iv) to retain the provision within the management agreement which allows the Council to terminate the Agreement in the event of a late payment by a community centre in relation to debts which are not disputed. However, to require that the management agreement require any disputed debt to be referred to the dispute resolution process outlined therein; and to refer consideration of the financial implications to Council on 4th April;
 - (v) to suspend Standing Order 22(1) to revoke the decision of the Committee of 23rd February – that there be provision to allow community centres who wish a lease in excess of five years to have such a lease subject to committee agreement – and instead that standard leases be for 10 years, with each request to be considered on a case by case basis and reported back to the Education, Culture and Sport Committee for approval; and to refer consideration of the financial implications to Council on 4th April;
 - (vi) to agree the proposed management agreement and lease appended to the report as amended above, although subject to approval by Council on 4th April where appropriate; and to delegate final refinements (including schedules on janitorial arrangements and community schools) to the Head of Legal and Democratic Services, in consultation with the legal representative of the community centres and the Conveners and Vice-Conveners of the Education, Culture and Sport and Finance and Resources Committees;
- (c) agree that, until such time as the management agreement is signed, those management committees which continue towards becoming leased will continue to receive a pro rata transition grant equal to the value of the Development Grant, paid on a monthly basis;
- (d) agree that the Council will not require community centres to offer residents a discount on charges as part of the Residents Discount Scheme;

- (e) instruct officers to investigate Council assistance in providing PVG checks, in consultation with management committees, and delegates to the Head of Legal and Democratic Services, in consultation with the legal representative of the community centres, the Conveners and Vice-Conveners of the Education, Culture and Sport and Finance and Resources Committees, any decision on whether the Council carries out checks or provides training and guidance;
- (f) seek further reports on the progress of signing community centres up to the management agreement;
- (g) otherwise note the report.

DECLARATION OF INTEREST

At this stage, Councillor Donnelly declared an interest by virtue of being the Chairperson of the Management Committee of Ferryhill Community Centre. He did not consider that the nature of his interest was significant enough to require him to withdraw from the meeting.

Councillor Donnelly, seconded by Councillor Yuill, moved as an amendment:-
that the management agreement be amended so that it does not prohibit local councillors from holding officer bearer posts on management committees.

Councillor Boulton, seconded by Mr Nicoll, moved as a further amendment:-
that the Committee reaffirm its previous decision that any request for a lease of more than five years be fully considered by the Committee on a case by case basis.

On a division between the two amendments, there voted:- for the amendment by Councillor Donnelly (5) – Vice-Convener, Donnelly, Greig, Robertson and Yuill; for the amendment by Councillor Boulton (8) – Boulton, Crockett, Cooney, Laing, Leslie and Young; and Mr Grant Bruce and Mr Alex Nicoll; declined to vote (6) – Convener; and Councillors Blackman, McCaig, MacGregor, May and Townson; absent from the division (2) – Mrs Mumtaz Abdullah and Mr Murdo Maclean.

On a further division between the successful amendment by Councillor Boulton and the motion, there voted:- for the motion (15) – Convener, Vice-Convener; and Councillors Blackman, Crockett, Cooney, Donnelly, Greig, Laing, McCaig, MacGregor, May, Townson, Young and Yuill; for the amendment (4) – Councillors Boulton and Leslie; and Mr Grant Bruce and Mr Alex Nicoll; absent from the division (2) – Mrs Mumtaz Abdullah and Mr Murdo Maclean.

The Committee resolved:-
to adopt the motion.