

This report will be made public on 30 September 2014

Folkestone

Hythe & Romney Marsh
Shepway District Council



Report number **OS/14/17**

To: Resources Scrutiny Committee
Date: 8 October 2014
Status: Non-executive decision
Heads of service: Bob Porter, Head of Housing, Land & Property,
Estelle Culligan, Solicitor to the Council
Cabinet members: Councillor Russell Tillson, Councillor John Collier

SUBJECT: LEAS CLIFF HALL CONTRACT

SUMMARY: A scrutiny review of the Leas Cliff Hall contract and budget was included in the Committee's forward plan (Minutes 48/14). This report covers the subjects included within the terms of reference of the review. It describes the Council's general strategy in managing the Leas Cliff Hall contract and details specific actions with regards to repairs and maintenance, health and safety and business performance.

REASONS FOR RECOMMENDATIONS:

The Committee is asked to receive and note the report.

RECOMMENDATIONS:

1. To receive and note report OS/14/17.

1. BACKGROUND

1.1 The Leas Cliff Hall contract incorporates the building lease and management agreement. The council is not involved in the day-to-day operation of the venue and its relationship is essentially contractually both in terms of managing the lease and the business operations.

1.2 A scrutiny review of the contract and budget was included in the forward plan. The terms of reference are attached as Appendix 1. The keys areas of enquiry were: -

- To review the history of the contact.
- To examine the current status.
- To consider whether the contract has offered value for money.
- To consider whether additional benefits can be negotiated.
- To consider future options in relation to the contract.

2. THE AGREEMENT

2.1 The scrutiny review included within its expected outcomes 'a clearer understanding' of the contract. The contract as the review recognises is complex covering not only the repair and maintenance obligations but the also the management of the hall. The key points of the agreement are summarised as follows.

2.2 The Leas Cliff Hall lease and management agreement is with Ambassador Theatre Group Venues Ltd (ATG) formerly Live Nation Venues and Clear Channel. The lease runs from 30 June 2006 for the period of twenty years.

2.3 Council obligations

a) Financial contribution

The Council's financial obligations are set out in clause 4 (payment). Under the agreement we make three separate monthly payments to ATG (figures as agreed 2006 levels):

- Management contribution – original base figure £350,000 p/a
- Maintenance contribution – original base figure £45,000 p/a
- Supplemental contribution – equal to the amount SDC charge in rent

The management contribution and the maintenance contribution are paid as a single monthly payment. The current budget is £645,000 p/a.

There is no profit sharing or similar clauses within the agreement.

b) Inflation clauses

The Council contributions are index linked to RPI (clause 4.7 and 4.8). The RPI anniversary date is September and is a rate 'equal to the rate of inflation over the immediate preceding 12 months'.

RPI is applied to both the management and maintenance contributions. The supplemental contribution will be uplifted in line with any increases in rent.

c) Maintenance

The maintenance responsibilities are covered in schedule 8 and mostly fall upon ATG for internal and external repairs of premises (as defined by the lease). The council has no responsibility for repairs and maintenance beyond the payment of the maintenance contribution (schedule 8.5).

Outside of the obligations in schedule 8, the lease requires the council to keep the tunnel (to the car park) in 'a good state of repair'. Based on values at the time of the lease, the council's maximum annual contribution to general repairs is limited to £5,000 and £40,000 for a single repair if required to prevent the closure of the tunnel. Uplifted for inflation this would be a potential contribution of around £63,000.

d) Other

The council also agrees: -

- To allow ATG to use advertising hoardings in the area within the agreement.
- To maintain the adjacent public car park with 'reasonable and consistent' charges.
- Not to manage or operate competing theatre businesses within the district.
- Not to manage or operate competing conference facilities within 10 miles.

2.3 ATG obligations

a) Performances

ATG (or Clear Channel at the time of the lease) have the final decision on all performance bookings and generally how the business operates. However, they are required in Clause 17: -

- To 'principally' use the venue for entertainment (17.1).
- Provide a minimum of 265 days for entertainment or conference events (17.1)
- To make 'reasonable endeavours' to sell as many tickets as possible and set an annual target for ticket sales to beat the preceding three-year average (17.4).

- Provide the council with details about annual booking returns (17.4)

The 265 days minimum is inclusive of any community bookings, all council use, 'get in and out times', rehearsals and force majeure cancellations.

b) Council and community bookings

Clause 9 deals with usage of the venue by the Council: -

- The Council is allowed to book a maximum of 8 days per annum at no charge (clause 9.2a).
- The Council has to use ATG to supply catering services for any events booked (clause 9.2c).
- In addition to the 8 days allowance, the Council has the right to use the venue for elections where possible booking 12 months in advance (clause 9.3h).
- The Council can use the venue in event of a civil emergency (clause 9.3h).

The agreement also agrees the use by community groups at a preferential rate. The groups listed in schedule 3 at the time drafting were: -

- Euromilitaire
- Model Railway
- Brass Band Competition
- Harvey Grammar Price Giving
- Folkestone Choral
- Pent Valley School
- Salvation Army
- FHODS Pantomime
- Trucks and Tracks

At the time of agreement, the total number of days given to community books was 31 per annum. The community use allowance can be substituted for other groups at our discretion. Community users are subject to similar terms as normal hirers about reservation times and use of the onsite catering facilities.

c) Maintenance

The contractor's maintenance obligations are set out in the lease and schedule 8, which breaks down the expected repairs and maintenance that ATG are expected to carry out during the course of the 20-year lease.

Schedule 8.1 estimates the financial commitment of the contractor to repairs and maintenance over the contract period as a total of £1,705,810 (based on 2006 figures). The Council's annual

maintenance contribution at the time of lease was £45,000. Over the twenty year lease, ATG are potentially committed but not limited to an additional £800K on top of the maintenance contribution depending on the actual costs of the works.

The contractor also agrees to set aside from the maintenance budget £10,000 per annum for unplanned maintenance. It is envisaged that this will form an unplanned maintenance fund that at end of the lease, any remaining funds will be split 50/50 with the council.

d) Liaison meetings

There are two levels of meetings identified in the agreement in clause 10 and clause 15.

The first is a liaison committee set up to review and advise on the operation of the complex. The Council is represented by a 'Chief Officer'. The agreement does not set out general membership of this committee or the frequency of meetings, other than they will annually review the community use events. ATG are responsible for setting up the liaison committee.

The second level meetings are to review the 'quantity and quality of productions and performances' held monthly with a representative of the Chief Officer and quarterly between an ATG senior manager and the Chief Officer.

In addition the lease has standard clauses that allow the council as landlord to enter and inspect the premises.

3. SDC MANAGEMENT ARRANGEMENTS

3.1 The Leas Cliff Hall contract is jointly managed internally with property services acting as the landlord and leading on repairs and maintenance issues, and the commercial unit (since October 2013) who responsible for the management fee budget and performance monitoring.

3.2 It should be acknowledged that liaison with the contractor has been sporadic until recently and not at the level of frequency originally envisaged in the agreement. This has meant that the council has to an extent needed to re-acquaint itself with the terms of the original agreement as well as develop its relationship with the contractor.

4. REPAIRS AND MAINTENANCE

4.1 As described previously, ATG are predominantly responsible for the repair and maintenance of the venue. This requires them to keep the venue in 'no worse condition' than at the date of the agreement (clause 5.1d main lease) and to undertake an ongoing maintenance plan over the period of the agreement. The original agreement anticipated that the maintenance

plan would need to be revised over this period to reflect changes in priorities.

- 4.2 In the agreement, the amount allocated to maintenance was not limited to the maintenance contribution and ATG are responsible for the financial risk of any additional repairs.
- 4.3 Prior to 2013, meetings and property inspections were completed on an ad hoc basis. Records kept were limited in their detail. Since 2013, there has been more regular contact and much improved exchange of information including a building survey report commissioned ATG and a recorded joint inspection completed in March 2014.
- 4.4 Property services have also undertaken a piece of work to compare the maintenance schedule in the contract and the actual works completed since 2006. The purpose of this was to develop a detailed maintenance record for building and to compare the actual level of expenditure against that anticipated in the agreement. This resulted in an improved understanding of the condition of the venue. However, the changes in company ownership prior to 2011 meant that some records were unavailable and making detailed financial comparison between expected and actual works was difficult, even before attempting to strip out inflation in order to make direct comparison to the 2006 schedule. The outcome of this exercise was that it was found that a good level of works had been completed in comparison to the schedule but there were gaps in terms of information and works that should have been completed.
- 4.5 Property services shall be working with ATG to agree a new maintenance schedule for next five years that incorporates the works envisaged for this period within the agreement, any works that we think were not previously completed and any works additionally required. In this last category the chief concern is damage to the venue's fabric and structure due to water penetration from the adjacent cliff, accentuated by heavy rainfall this year.
- 4.6 Agreeing the five-year maintenance plan will be a priority for the new Strategic Assets Manager. Property services are also proposing to commission their own building survey of the hall to supplement those carried out by ATG so that we have our own independent assessment.

5. HEALTH AND SAFETY

- 5.1 ATG is primarily responsible for health and safety at the venue and there is a separate regime of inspections and checks carried out for the entertainment license.
- 5.2 The Council as landlord still retains a residual responsibility for safety at the hall. In March 2014, a corporate health and safety audit was completed by the council's Principal Environmental Health Officer, who identified no significant concerns. The completed inspection is attached as Appendix 2.
- 5.3 The next safety audit will be carried out in the Spring 2015.

6. BUSINESS PERFORMANCE

6.1 The agreement was set up on the basis that the contractor was responsible for the financial risk of operating the venue. To this end, the Council's financial contribution is limited to the annual management fee. There is no profit (or loss) sharing and ATG retain all incomes.

6.2 The agreement included high level performance measures notably the requirement to produce 265 'entertainment' days and a 'best endeavours' requirement to annually improve ticket sales.

6.3 Prior liaison with Leas Cliff Hall in terms of business performance had been occasional and one of the first tasks of the commercial unit was to set up regular meetings to review business performance and to obtain some baseline data on entertainment days as well as ticket sales. This is attached as Appendix 3.

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6.4 In practice, assessing the number of entertainment days was difficult (see Table 1). This was due to defining what events should be included within the definition assessing the non-performance days (get in/get out) that could also included within the figure. The information on Table 1 should therefore be seen as a best guess rather than definitive.

6.5 In preparing this information, it also became clear that the quantity of days was in real terms only of limited use as a performance measure. A more important measure was the quality of entertainment and its impact on attendance. This also needed to consider how events were programmed and how events were marketed. In our ongoing discussions with ATG, we have therefore concentrated on tickets sales performance as shown in Table 2.

6.6 Ticket sales since the start of the agreement have declined by roughly 50% and this is a major concern when in terms of the long-term viability of the venue. The main focus of our discussions with ATG has been how ticket sales can be improved. This has involved understanding why sales declined in the first place and considering how the council best engages with ATG in the future to improve this.

6.7 ATG identified the following reasons for the decline in sales:-

- The change of company ownership impacted on business planning and business development.
- The impact of the recession.
- Difficulties with programming popular acts, notably music and children events.

6.8 In terms of our engagement we have adopted the following strategy: -

- Maintain regular contact with ATG including formal liaison meetings each quarter.
- Receive regular updates on business performance (e.g. quarterly ticket sales).

- Work with ATG to develop a long-term business plan that improves ticket sales as well as develops other aspects of the business.

6.9 Earlier this year we wrote to ATG asking them to outline their business plans for the Leas Cliff Hall. A meeting was arranged with ATG on 31/7/14 attended by senior managers from their business development, programming and marketing teams. The meeting was positive and covered all aspects of the business.

ATG outlined several proposals for the hall including: -

- Undertaking work to increase the standing capacity from 1500 and 1800. This will help compete against other similar live music venues like the Winter Gardens. The capacity increase is allowed under the Fire Certificate and the business case has been agreed internally by ATG for the capital expenditure. This is planned to take place in time for 2015.
- Improved use of the roof terrace including restoration, using original materials, the central chess board, installation of temporary beach hut style kiosks to sell food and ice creams. This includes the potential installation of a temporary screen for children's cinema. The intention is to do this in a pre-war style and mostly for daytime use. The ATG licence covers this area but they will need to check in terms of all the proposals. ATG management is considering the business proposal for investment.
- Improved use of marketing using CRM database to target campaigns. Improved social media campaigns as well as more traditional type campaigns (e.g. 40,000 brochure print run). They will also promoting the hall within music industry publications like UK Live in order to attract band promoters.
- Improved marketing of the venue as a conference and wedding venue. A new promotional video as well as review of the publications the hall is currently being promoted in. The hall has recently hosted a large catering event (500+) and would like to attract other similar sized events as well as high profile corporate events.

6.10 We are now in the position where we have an improved understanding how the Leas Cliff Hall operates as a business as well as a clear set of business proposals, which we can assess ATG's performance against. However, the real test will be the impact on future ticket sales.

7. CONCLUSION – THE KEY AREAS OF ENQUIRY

7.1 The report has concentrated on the history of the contract and the current status.

The review also asked the following to be considered: -

- To consider whether the contract has offered value for money.

- To consider whether additional benefits can be negotiated.
- To consider future options in relation to the contract.

- 7.2 The value of money for a contract is often determined by the market conditions on entering the contract and how financial risk is allocated between client and contractor. In entering the original agreement, the council largely made the contractor responsible for the financial risk of operating the venue and repairs and maintenance obligations. The Council also sought certainty in its ongoing management contribution with indexation linked to RPI from the outset. There was no clause for ongoing fee re-negotiation and the contractor took the risk of operating costs exceeding indexation. The management fee paid today is based on the original agreed amount in the contract plus uplifts for annual inflation.
- 7.3 Comparison to management fees paid by other councils will always be subjective. The management fee has to be considered in the context of the building and how we wish it to operate. Crucially, the management fee paid is also the 'all in cost' for the service. For example, unlike other venues, we have not retained property maintenance risk or the cost of supplying services or utilities. The agreement could have been drafted so that the council retained more of the financial risk or retained operating costs, which could have resulted in a lower management fee. There are scenarios where this could have been beneficial but equally where costs could have been higher.
- 7.4 In terms of additional benefits, any negotiation would need to be outside the terms of the contract. As previously described there are no profit sharing clauses and whilst the rent can be reviewed, contractually it would need to be matched by an increase in the management fee. The recommendation at this stage would be to concentrate efforts agreeing the five-year maintenance plan and working with ATG to develop its business plan. It is expected that both of these will require additional investment by ATG.
- 7.5 In terms of future options for the contract, looking ahead to the end of the current agreement we would wish to be in a position where the hall had recovered its position in terms of ticket sales and continued to develop other aspects of its business. The property would also be in good condition without a maintenance deficit. It is difficult to see in terms of expertise required, the council operating the venue without the need for a commercial partner, now and in the future. The strategy at present is to engage with ATG to make the current agreement work as it was originally intended and also further develop the experience of working in this type of commercial partnership.

8. RISK MANAGEMENT

Perceived risk	Seriousness	Likelihood	Preventative action
Further decline in ticket sales	High	Medium	<ul style="list-style-type: none"> • Maintain regular contact with ATG including formal liaison meetings each quarter. • Receive regular updates on

			<p>business performance (e.g. quarterly ticket sales).</p> <ul style="list-style-type: none"> • Work with ATG to develop a long-term business plan that improves ticket sales as well as develops other aspects of the business.
Building dis-repair	High	Low	<ul style="list-style-type: none"> • Develop 5-year maintenance plan
Health and safety	Medium	Low	<ul style="list-style-type: none"> • Continue annual corporate safety audits.

9. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

9.1 Legal officer's comments (EC)

The legal issues are covered fully in the body of this report.

9.2 Finance officer's comments (MF)

The financial implications are covered in the body of this report.

9.3 Diversities and equalities implications (BP)

The equalities and diversity implications of this report have been considered.

10. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Andrew Rush, Corporate Contracts Manager
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The following background documents have been relied upon in the preparation of this report:

The Leas Cliff Hall lease and management agreement

Appendices:

- Appendix 1: Scrutiny review terms of reference
- Appendix 2: Corporate health and safety audit checklist
- Appendix 3: Summary of the Leas Cliff Hall performance figures