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SHEPWAY DISTRICT COUNCIL

Report Number **6447**

To : **LEAS CLIFF HALL WORKING GROUP - 10 FEBRUARY 1999**
POLICY AND RESOURCES COMMITTEE - 15 FEBRUARY 1999

Subject : **LEAS CLIFF HALL - REDEVELOPMENT PROPOSALS**

SUMMARY

This Report sets out the current position of the negotiations for the redevelopment of the Leas Cliff Hall.

RECOMMENDATIONS:

1. That the Report be received.
2. That the Solicitor to the Council be authorised to enter into a memorandum of understanding, development agreement and lease on the terms outlined in the Report to secure the redevelopment of the Hall.

Key Strategic Objective(s) Reference(s):

11.

Financial Implications:

The Council will contribute £1.5m towards the capital cost expected to be £2.25m. The Council will continue to pay an annual management fee (increased annually for inflation) at the same level as the existing fee. The Council will contribute approximately £45,000 per annum (increased annually for inflation) towards the total maintenance costs expected to be in the region of £1.8m at current prices over 20 years.

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1. BACKGROUND

- 1.1. At the Leas Cliff Hall Working Group on 8 December 1998 and at the Policy and Resources Committee on 14 December 1998, Report 6378 was received which set out the proposals for the redevelopment of the Leas Cliff Hall.
- 1.2. The proposals were accepted as a basis for further negotiations and officers were authorised to continue detailed discussions. Further discussions have, in accordance with the resolution, taken place and this Report sets out the present position.
- 1.3. By way of reminder, the current management position is that Apollo manage the hall under a contract with the Council which will expire on 31 January 2000. Apollo have a lease also of the hall which will expire at the same time. There is no right to any renewal of the lease, nor the management agreement. The current management fee is £368,000.

374,000?

2. PROPOSED NEW DEVELOPMENT

- 2.1. The proposals put forward by Apollo have not changed since the last meeting. In essence, they comprise the construction of a fly tower, the raising of the seating capacity of the theatre to 1,000 and the construction of a conference/exhibition facility below the existing theatre to a seating capacity of 536. The original sketch drawings of the scheme are attached.
- 2.2. There has been much discussion over the capital cost of the works. The Council's position has always been that it cannot spend more than £1.5m of its capital resources. It is proposed that the Hall will close for performances from after the Yehudi Menuhin Violin Competition in April 2000 and re-open fully in October 2000. (There is likely to be an opening of the conference/exhibition space in September 2000). Box office services will continue to be open throughout the performance closure period.
- 2.3. Apollo will therefore design the scheme so that it will be within its and the Council's budget. The total capital cost will therefore be £2.25m.
- 2.4. The scheme as stated above remains essentially the same. However, certain elements have had to be trimmed, such as the Port Cochiere enhancement (the tent like entrance structure) and the roof terrace.
- 2.5. Whilst this is slightly disappointing, it does not detract from the fact that the hall will be very much enhanced.
- 2.6. Apart from Apollo's confidence that they will be able to contain costs under the building contract, one of the reasons that the scheme will be much the same is that some of the improvements will fall within the maintenance and repairs schedule to which the Council will contribute (see below).

3. PROPOSED NEW AGREEMENTS

3.1. General

The proposed new agreements are somewhat involved and comprise several elements. These are set out below.

3.2. Memorandum of Undertaking

- .1 This is for the most part a non binding document. Its purpose is to set out what Apollo and the Council intend to achieve and in very general terms the legal documentation necessary. A copy is attached.
- .2 If the Committee approve the arrangements the memorandum will be the first document to be signed. Its importance has been that it has identified the issues of principle which need to be agreed.

3.3. Extension of the existing Agreement and Lease

- .1 As stated above, the existing arrangements come to an end on 31 January 2000. It is proposed that these be extended until the date of practical completion of the new complex.
- .2 There are financial implications which are set out below.

3.4. Development Agreement

- .1 Apollo will be granted a development agreement. In basic terms Apollo will build the theatre in accordance with plans approved by the Council and in accordance with an agreed programme.
- .2 As is so often the case, the Council will be wearing more than one hat. It will approve the plans as the landowner but it will also consider a planning application in its role as the local planning authority. The two roles will remain distinct.
- .3 The agreement will be conditional on certain things first happening, eg the grant of planning permission and the consent of the Folkestone Estate to the proposal.
- .4 Apollo will be the employer under the contract and so the Council will have no liabilities under it. The Council will be given certain step-in rights to enable the development to be completed should Apollo default (see below).

3.5. New Lease

- .1 On the completion of the development, Apollo will be granted a 20 year lease. Under the lease Apollo will be responsible for the maintenance of the building (both the outside and the inside) with the Council contributing a cash limited sum towards the maintenance.
- .2 The lease will be full repairing and insuring except with regard to the provisions relating to the end of the term. Under a full repairing and insuring lease the lessee normally promises to surrender of the premises in an as new condition.
- .3 Apollo were unwilling to accept the obligation relating to the end of the term but have promised to hand back the premises in a good condition that it can be used as a working theatre.
- .4 It must be remembered that there will be an agreed maintenance schedule to which the Council will contribute. Provided this schedule is kept to (and the Council will have the ability to enforce it) then the theatre should be handed back in a good condition.

3.6. New Management Agreement

- .1 This will be based on the existing management agreement. The management fee will be the same and will be increased annually with inflation.

- .2 Apollo will accept the same performance criteria as the existing agreement and there will be certain safeguards for community use.

4. FINANCIAL IMPLICATIONS

- 4.1. There are several financial implications for the Council.
- 4.2. The first is that the Council's capital sum of £1.5m will be spent. This amount has always been earmarked for this project.
- 4.3. Secondly, that the management fee will be payable annually over the 20 year period.
- 4.4. There are the costs relating to the closure. Apollo will have certain costs. The first of these are redundancy costs. Under the existing management agreement, when it was envisaged that the theatre would return to the Council, the existing employees would have become the employees of the Council. The Council would therefore be responsible for any redundancy costs. The Council will therefore meet these costs under the arrangements. In addition, it is proposed that the Council should meet the fixed costs of Apollo such as insurance and rates during the closure period.
- 4.5. In addition it is proposed that the Council contribute to the launch cost of the new theatre.
- 4.6. The Council's contribution towards the closure and launch costs will be approximately £137,000 which is the equivalent to the management fee for the closure period.
115,000
- 4.7. As mentioned above, the Council will contribute towards the maintenance of the hall. Over the 20 year period of the lease it has been projected that the total maintenance costs, including fees, will be about £1.8m. Apollo made the offer to split these costs 50:50.
- 4.8. The Council will therefore contribute approximately £45,000 each year towards maintenance. This will be adjusted annually for inflation. This is about £30,000 more than the limited amount included in the current budget so increased budgetary provision will need to be made in due course.
- 4.9. Finally the Council has an obligation to obtain a market rent for the premises. This is being obtained. However, whatever rent will be charged will be added to the management fee.

5. ANALYSIS OF THE PROPOSALS

- 5.1. It is important for Members to appreciate that there has been no competition for the lease. All the provisions are contained in the lease and strictly speaking, the contract standing orders do not require disposals of land to be tendered. It does have to be recognised that there is a strong element of service provision which will be contained in the lease and these have not been tendered. The question arises therefore how the Council can justify itself that it has obtained good value.
- 5.2. The District Auditor has been consulted. In a letter he has stated that the development "appears to represent good value for money to the Council provided that:

- sufficient controls are built into the Apollo lease so that the Council can ensure that its maintenance contribution is not misused and its responsibilities under the Folkestone Estate lease are met;

- adequate arrangements are made so that the Council can monitor how its capital contribution of £1.5m is spent and determine that value for money is obtained;
- any proposals to vary the annual management fee other than for inflation are subject to audit sanctions".

5.3. The District Auditor goes on to state:-

"I am aware from my audit involvement at other local authorities that there appears to be very little private sector interest currently in tendering for public sector contracts, this is particularly true in the field of arts and entertainment".

- 5.4. The above, coupled with the fact that Apollo is the largest private theatre operator in the country, would appear to provide sufficient comfort that the project represents good value.
- 5.5. On the question of the maintenance charges, the figures that Apollo have come up with for a 20 year maintenance schedule basically accord with the views of an independent study commissioned by the Council.
- 5.6. It is however, very important to appreciate that the liability for the maintenance of the building will be Apollo's and not the Council's. Any unforeseen events will have to be dealt with by Apollo.
- 5.7. The maintenance contribution, bearing in mind that the Council does have a liability under its lease from the Folkestone Estate to maintain the building and will be getting the building back at the end of the 20 years with the benefit of this maintenance, does appear to represent good value.
- 5.8. The risks really fall into two periods, the construction and the running period.
- 5.9. During the construction period the monies for the building costs will be held by the Council. The Council will be given certain step-in rights should Apollo default during the building process. The Council will not, however, be obliged to step in. The worst case scenario, however, would be if Apollo defaulted during the course of the building contract and there was insufficient monies to complete the building. The Council could, of course, take action under the contract against Apollo but such an action could take a long time. The Council could therefore be left with a half complete building.
- 5.10. Apollo, however, will be going out for a fixed price contract and are a large company. Whilst there is a risk on balance it appears to be acceptable.
- 5.11. The other risk concerns the running of the theatre. The management agreement will have performance criteria. The issue of the performance criteria is a very difficult area and the performance criteria will be very broad. Although it will be possible for the Council to take action in case of major default (and this would entail forfeiture of the lease) it will be difficult to take any realistic action should the theatre not be used to what the Council might see as its full potential. The Council will be relying on Apollo's commercial judgement and imperatives to run the theatre. The question of more stringent performance criteria have been raised but Apollo have made it quite clear that they would not be prepared to accept any more onus.
- 5.12. There will be regular liaison meetings, but as stated above, what the Council will be relying on are commercial pressures and Apollo wishing to maintain a good reputation in the public sector. The risk is, however, that Apollo will, over the years, become less effective.

- 5.13. It is difficult to guard against such a risk. All that can be said is that Apollo do seem to be a dynamic company with no signs that its performance is deteriorating.

6. PROPOSED DISPOSAL OF OPEN SPACE

- 6.1. In accordance with the statutory provisions the proposed lease of the land was advertised.
- 6.2. The correspondence from the person making representations is attached.
- 6.3. Mr Taylor does not appear to be objecting to the lease of the open space as such but seems more concerned with the details of the arrangements. These obviously have to remain confidential.

7. PUBLICITY

- 7.1. The redevelopment is a major project. The public relations aspect will have to be handled carefully.
- 7.2. If the Committee approves the project, discussions will have to take place with Apollo on such matters of joint press releases and a process of public consultation will also take place.

8. CONCLUSIONS

- 8.1. Members will have to weigh up the financial implications and risks of the proposal against the other possible alternatives.
- 8.2. The Council could re-commence running the hall itself. The works to the southern elevation and balcony would still need to be done and these would cost approximately £900,000. It has to be recognised that the Council does not have the financial or commercial "clout" to attract large acts and that it is not a professional theatre operator.
- 8.3. The Council could pull the hall down, although this has not been costed. It is, however, considered that this would have a serious impact on the Council's tourism initiative. The recently produced Arts Strategy consultation sees the Leas Cliff Hall as vital to the Council's tourism product.
- 8.4. Apollo's proposals do offer the chance of the hall becoming a more modern theatre and well maintained, which has not been the case in the recent past, with the ability and facilities to stage events which will attract larger audiences. In addition, the specialist conference facility will be a benefit to the town.
- 8.5. In addition, the new complex is likely to require more staff. Apollo will be contractually bound to offer all the staff made redundant, an interview for posts in the new theatre.
- 8.6. It is considered, therefore, in all the circumstances, that the agreements with Apollo should be entered into.

