

WIRRAL COUNCIL

CABINET

14 APRIL 2011

SUBJECT:	<i>BYRNE AVENUE RECREATION CENTRE, BYRNE AVENUE, ROCK FERRY</i>
WARD/S AFFECTED:	<i>ROCK FERRY</i>
REPORT OF:	<i>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>CORPORATE RESOURCES</i>
KEY DECISION?	<i>NO</i>

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of the report is to advise Members of the present position in respect of the Byrne Avenue Recreation Centre and seek instructions as to the way forward.
- 1.2 A lease of this building would support the Council's goal of ensuring that the Council's buildings and assets are safe, effectively managed and used.
- 1.3 The transfer of responsibility for the repair and maintenance of this building would save the Council revenue expenditure on security, empty rates etc.
- 1.4 The action proposed in this report is not a Statutory duty.

2.0 RECOMMENDATIONS

That:

- 2.1 The Byrne Avenue Recreation Centre be transferred to the Byrne Avenue Community Trust, by way of lease.
- 2.2 The Director of Law, HR and Asset Management in consultation with the Portfolio Holder for Corporate Resources to agree the terms and conditions of the lease.
- 2.3 The director of Law, HR and Asset Management be authorised to complete the necessary legal documentation.
- 2.4 In the event of appropriate terms of lease not being agreed, or the necessary funding not being obtained, the matter be reported back to Cabinet.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 Byrne Avenue Community Trust (BACT) has advised the Council that it cannot comply with a key aspect of the funding criteria of the Reaching Communities (Big Lottery) Fund because it does not have ownership of the building. Accordingly, no application to this fund can progress unless BACT has been granted a lease.

4.0 BACKGROUND AND KEY ISSUES

- 4.1 At its meeting on 4th November 2010, Cabinet received representations from BACT in respect of the proposed transfer of this asset. It concluded that further information needed to be provided by the group to enable a final decision on its application to be taken, particularly in respect of works to be undertaken, timescales, the availability of funding and the sustainability of its business plan.
- 4.2 In all the circumstances, it considered that the group should be afforded a final opportunity to submit a transfer proposal which demonstrates the availability of funding to refurbish the facility within a reasonable timescale and contains a sustainable business plan for its future operation;
- 4.3 Accordingly, Cabinet resolved that:-
- (1) BACT be thanked for its efforts to date in pursuing an asset transfer of this facility;
 - (2) BACT be granted a further period, expiring on 31 March 2011, to allow it to satisfy officers on the programme of works to be undertaken to the building, the timescales for those works which should contain specific milestones against which performance will be judged, the availability of all necessary funding to complete those works and the existence of a sustainable business plan for the future operation of the facility;
 - (3) Officers be requested to earmark a maximum sum of £350,000 within the overall provision to support Community Asset Transfer through the Community Fund as the Council's contribution towards the overall scheme, with that sum to be made available only when the total funding package is confirmed and the group's business plan is agreed;
 - (4) Upon the successful fulfillment of these conditions, a report be submitted to Cabinet on 14 April 2011 on the finally agreed terms for asset transfer; or
 - (5) If BACT fails to satisfy these conditions by 31 March 2011 the Director of Law, HR and Asset Management be authorised, in consultation with the Portfolio Holder, to dispose of the property on the open market in accordance with Option 3 of the report.

- 4.4 Since Cabinet made those resolutions, BACT has been trying to make progress in respect of the various requirements. Further inspections and visits to the building have been carried out and adjustments made to the proposed schedule of work. However, a final programme of works with timescales for those works including specific milestones, against which performance will be judged, has not yet been submitted. BACT has indicated that its professional advisers are ready to develop a detailed programme once it is confirmed that they can be granted a lease.
- 4.5 The Cabinet also required proof of the availability of necessary funding to complete the works required, but BACT has been unable to do this for the reason identified in this report.
- 4.6 With regard to a sustainable business plan, the Director of Corporate Services advised Cabinet in the report of 4th November 2010, of his opinion that the plan as submitted was aspirational, with the financial forecasts inadequate to make a judgement with regard to sustainability. Since then, BACT has submitted no additional information amending its original plan. However, in its update paper submitted on 8th March 2011, it advised that its own accountants consider the business plan to be viable, robust and sustainable. This matter remains unresolved, but BACT has said its accountants will be available to work with Council officers to identify and resolve any shortcomings in its plan.
- 4.7 BACT has previously advised that it has identified various different organisations that may be able to provide grant assistance towards the necessary scheme of refurbishment for the building. From the publically available information published by these different organisations, only small individual grants are likely to be available, in the event of BACT submitting successful applications. Accordingly, BACT now advises that it considers that its best opportunity to obtain significant grant support will come from an application to the Reaching Communities (Big Lottery) Fund.
- 4.8 However, BACT has identified a fundamental impasse with regard to an application for funding from the Reaching Communities (Big Lottery) Fund. This is that one of the principal criteria which has to be satisfied, before any grant application may be progressed to stage 2, is that the applicant must own the building, either by freehold or lease. BACT is confident that, if it can satisfy this criterion, it will be well placed to secure funding from this source, because it considers that it meets all the other funding criteria.
- 4.9 It will be for the Reaching Communities' grant application process to determine whether BACT does indeed satisfy all the other criteria, and the grant of a lease cannot guarantee funding support from Reaching Communities. Nevertheless, BACT has requested an opportunity to pursue this option, with the benefit of a lease of the building.
- 4.10 In circumstances where a building requires such substantial repair and refurbishment, the Council would normally grant a Building Agreement and subsequently a lease, once the conditions of the Building Agreement had been satisfied. Officers understand that a proposal structured in this way

would not satisfy the Reaching Communities' criteria and that, therefore, a lease would have to be granted from the outset. Any lease would make the following actions conditional:-

- A schedule/programme of agreed works to be undertaken to the building.
- The inclusion of timescales for those works, including specific milestones, against which performance will be judged.
- The existence of an approved sustainable business plan for the future operation of the facility.

- 4.11 It would be important that the Council, as Landlord, is able to ensure that this building is brought back to operational use by the Trust in a structurally safe condition with a sustainable business plan. Accordingly, the lease would contain forfeiture clauses that would be triggered if any of these three essential actions are not completed. BACT would not be allowed to open and run the facility operationally, until the Council was satisfied that all the necessary works have been completed to a satisfactory standard.
- 4.12 Once the lease had been entered into, the Council would also have to be satisfied that sufficient progress was being made towards securing funding to finance the necessary works of repair and refurbishment. If, for any reason, funding was not secured, the Council would reserve rights to terminate the lease. BACT has indicated that it would accept a 12 month deadline beyond which, if funding is not received, the property would revert to the Council. The lease would also provide that the Community Fund allocation of £350,000 could not be drawn upon until the full funding package for the necessary works is in place.
- 4.13 If Members are minded to give BACT a final opportunity to try and effect a Community Asset Transfer, it is recommended that the Council transfers the building by granting a lease on the basis set out above, with detailed terms to be agreed by the Director of Law, HR and Asset Management in consultation with the Portfolio Holder for Corporate Resources.
- 4.14 Members will appreciate that any grant application of this nature will take time to process and a definitive approval is not necessarily guaranteed. Therefore, the report also recommends that Cabinet be advised if appropriate lease terms are not agreed or that the necessary funding is not obtained.

5.0 RELEVANT RISKS

- 5.1 Until any lease is signed, the Council will continue to be responsible for the empty rates and security costs associated with the retention of this building. If Members are minded to approve the proposal set out in this report to transfer this building to BACT these costs will become the responsibility of BACT.
- 5.2 BACT has however asked whether the Council is prepared to continue insuring the building for the 12 month period in which it will put together its funding package. In all the circumstances it is recommended that this be

agreed on the basis that the Council will not insure the building after the first 12 months of the lease and that BACT will assume responsibility for insuring the building beyond that point.

- 5.3 Risks arise in the event that BACT is unable to meet the conditions of the lease, or fails to secure the necessary funding. In these circumstances, the Council will make provision for the building to be returned to its control. Similarly, if the lease is commenced but BACT cannot operate the facility to deliver the services identified in the user clause in the lease, then the building will also revert to the Council.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 To carry on pursuing Asset Transfer as at present. BACT has clearly stated that without a legal interest in the building, it will be frustrated in its attempts to apply for grant funding. Accordingly, this option is not recommended because there is a need to overcome this impasse.
- 6.2 To implement the Cabinet Minute authorising disposal of the asset. This could be undertaken, however, given the current adverse market conditions, it appears that there will be little lost in giving BACT a final opportunity to accept a transfer of the building.
- 6.3 To continue to retain the building in the Council's control. This is not recommended because Cabinet has confirmed that the building has no future operational purpose and is therefore a surplus asset.

7.0 CONSULTATION

- 7.1 As part of the process of compiling its business plan, BACT has consulted potential customers and other user groups who might use the facility if it was reopened following refurbishment.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 The building was previously run by a voluntary group, which was unable to continue to operate the premises as a swimming pool. The building was advertised for Community Asset Transfer (CAT) in accordance with the Council's CAT policy and BACT were the preferred bidder (one other party having applied). The Council has made provision for swimming activities to be met elsewhere.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1 The £350,000 previously earmarked by Cabinet from the Community Fund, to support this transfer, has to be spent by 31st March 2012.
- 9.2 The annual costs of approximately £23,000 currently being incurred by the Council in retaining this vacant building are empty business rates, electricity, insurance, rental of temporary fencing around the pool, security and boarding up.

9.3 In the event of BACT taking over the building, it will have an opportunity to apply for an exemption from business rates because of its status as a charity. This would reduce these outgoings considerably.

9.4 There is no existing revenue budget for this property and currently these monies are being met from the Strategic Assets budget.

10.0 LEGAL IMPLICATIONS

10.1 The Director of Law, HR and Asset Management will be required to prepare a lease, if satisfactory terms are agreed.

11.0 EQUALITIES IMPLICATIONS

11.1 An Equality Impact Assessment is not required.

12.0 CARBON REDUCTION IMPLICATIONS

12.1 The building is currently vacant. In the event that it is repaired and refurbished, it is anticipated that CO2 production will be less than that previously produced when the building was last used operationally by the Council, because of the installation of more energy efficient plant. There would be a reduction in the Council's carbon emissions, if the facility was leased to BACT.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 Planning permission is not required to recommission the building as a swimming pool and sports centre.

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APPENDICES

None

REFERENCE MATERIAL

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	04.11.2010
Cabinet	02.09.2010
Cabinet	28.05.2009