

Cheltenham Borough Council

Cabinet - 26 July 2011

Lease of the Bath Terrace Car Park Toilets at less than best consideration to Bath Road Traders Association

Accountable member	Cabinet Member for Built Environment ,Councillor John Rawson
Accountable officer	Head of Property and Asset Management - David Roberts
Accountable scrutiny committee	Environment
Ward(s) affected	Park
Key Decision	No
Executive summary	<p>The Cabinet is being asked to consider leasing the Bath Road Car Park toilets to the Bath Road Traders Association (BRTA) for three years. This is to allow BRTA to manage the cleaning , opening and closing of the toilets. This will allow the toilets to be kept open following the Councils previous decision to close them.</p> <p>It is proposed that a rent should not be charged and therefore could be considered to be at less than best consideration. Although the lease does not require best consideration consent under S123 of the Local Government Act of 1972, as it is for less then seven years. In line with Cheltenham Borough Council's constitution, all leases at less than best consideration must be agreed by Cabinet.</p> <p>The Council is retaining the responsibility for the building other than the cleaning, opening and closing. For example – repairs and insurance (including PLI).</p> <p>BRTA have already taken on the responsibility, and currently have occupation by way of a Tenancy at Will, which will remain in place until this decision is taken.</p>
Recommendations	<ol style="list-style-type: none">1. To let the building shown edged red on the attached plan to Bath Road Traders Association2. To delegate authority to the Head of Property and Asset Management in consultation with the Head of Legal Services, to agree the terms of the lease and conclude the letting

Financial implications	<p>The financial implications for operating the Bath Road toilet facility are as highlighted in the report below.</p> <p>In-house option Para 1.5 - £52,000</p> <p>Outsourcing option Para 1.6 - £23,500</p> <p>Bath Road Traders Association Para 1.8 - £7,194</p> <p>Contact officer: Andrew.Powers</p> <p>andrew.powers@cheltenham.gov.uk 01242 264121</p>
Legal implications	<p>Although the Council is not obliged by s123 of the Local Government Act 1972 to obtain best consideration, it must act prudently. Cabinet may consider that the wide powers contained in the Local Government Act 2000 enable it to grant the proposed lease at nil consideration.</p> <p>Appropriate steps will be taken prior to completion of the lease to ensure that the tenant does not obtain the benefits of security of tenure granted to business tenants by the Landlord & Tenant Act 1954</p> <p>Contact officer: Rose Gemmell, rose.gemmell@tewkesbury.gov.uk, 01684 272014</p>
HR implications (including learning and organisational development)	<p>None</p>
Key risks	<p>No financial risks as costs are known</p>
Corporate and community plan Implications	<p>Enhancing and protecting our environment</p> <ul style="list-style-type: none"> • Using our property assets effectively for the benefit of the community; <p>Strengthening our communities</p> <ul style="list-style-type: none"> • Working in consultation with the community, community groups and the voluntary sector;

1 Background

- 1.1 The Public Toilets are located in Bath Terrace Car Park, which is in close proximity to the Bath Road shopping area.
- 1.2 Following the Cabinet decision in February 2011 (as part of the Bridging the Gap initiatives outlined in the General Fund Budget Proposals), to close the majority of the public toilets in Cheltenham including the toilets in Bath Terrace Car Park, the Bath Road Traders Association (BRTA) made representations to the Council as they consider these toilets provide an important facility and contribute to the continuing success of the Bath Road shopping area.
- 1.3 CBC have already implemented a revision to the work force considered necessary to service the 5 toilet blocks that would remain open following the Cabinet decision in February.
- 1.4 The current crew are already working at full capacity servicing the remaining five public conveniences as they have the added responsibility of opening, closing and cleaning the pavilions located within our public playing fields throughout the borough which are regularly used

by sport's and social clubs throughout the year. As a result the optimum number of public conveniences the team can manage from an operational and cleaning perspective is 5

- 1.5 To retain the opening and cleaning of the Bath Road Toilets in house due to the structure and commitment of the current work force would entail re-employing an additional public convenience crew of 2 full time equivalent staff, based on salary Grade C (and who in effect would not be working at full capacity) plus transport, it would also be necessary to account for 14 weeks agency labour to provide holiday and sickness cover. The total cost to CBC would be £52,000 pa and therefore would be a disproportionate cost to the Council for the work to be undertaken.
- 1.6 Consideration has also been given to employing external contractors estimates indicate that this would cost in the region of £23,500 pa to open close and clean the toilets in Bath Terrace
- 1.7 As a result of the above an alternative resolution to address the issue involved the engagement and negotiations with the BRTA.
- 1.8 The BRTA expressed an interest in assisting in keeping the toilets open, and subsequently agreement has been reached between BRTA and CBC, whereby BRTA will manage the cleaning, opening and closing of the toilets, for which CBC will pay BRTA for the service, at 12 equal monthly instalments of £599.50 which equates to £7194 pa. This represents by far the most cost effective option, and a saving of £16,306 over the next most cost effective option (Para 1.6).
- 1.9 With each of the above options responsibility for the repair, insurance (including PLI), utility charges and rates, will remain with CBC, and which are estimated at £5,820 pa.
- 1.7 To facilitate this it is necessary to grant to BRTA a lease for which it is not intended to charge a rent. It has been agreed that BRTA can use the building for advertising and could if they wish charge for use. Therefore, the lease could be considered to be at less than best consideration and must be agreed by Cabinet in-line with the Councils constitution.
- 1.8 General Consents issued by the Secretary of State include the Well Being Powers created under the Local Government Act 2000, give the Council authority to dispose at less than best consideration if it leads to:
 - The promotion or improvement of economic well-being
 - The promotion or improvement of social well-being
 - The promotion or improvement of environmental well-being
- 1.9 It is considered that the agreement negotiated with the BRTA satisfactorily meets these criteria.

2. Property Lease Information

- 2.1 BRTA have already taken on the responsibility for provision of the toilets and currently have occupation by way of a Tenancy at Will, which will remain in place until this decision is taken.
- 2.2 The lease proposed is for three years, at nil consideration with an annual mutual break clause. The lease will be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954, allowing CBC to gain possession at the end of the lease or at the break clause if exercised.
- 2.3 BRTA are responsible for the cleaning, opening and closing of the toilets. BRTA will not be permitted to undertake any alterations to the premises, but will be allowed to affix notice/advertising boards to the building subject to Council approval, not to be unreasonably withheld. BRTA will not be permitted to assign or sublet the property. BRTA will be allowed to charge for use of the toilets if they wish.
- 2.4 CBC are responsible for keeping the premises in repair and decoration. CBC will pay the utility bills and Rates. CBC will insure the building, and provide PLI cover for the use as public toilets.

2.5 Not to be included in the lease, but as part of the agreement, BRTA are to invoice CBC for the cost of the cleaning contractors and CBC will provide consumables to BRTA.

3. Consultation

3.1 Councillor Whyborn has been heavily involved in the discussions and agreement with BRTA.

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Appendices	
Background information	