

Executive Decision Report

Highfields Community Association

Decision to be taken by: City Mayor, Sir Peter Soulsby

Decision to be taken on: 24 July 2015

Lead director: Liz Blyth



City Mayor

Useful information

- Ward(s) affected: Wycliffe, Spinney Hills and Stoneygate
- Report author: Shilen Pattni
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- Report version number: 1.0

1. Summary

This report sets out concerns in relation to engagement and funding of Highfields Community Association (HCA) for the management and operation of Highfields Centre.

2. Recommendations

The City Mayor is asked to note the significant concerns raised in this report and to consider the following:

- a. To conclude the funding issue by making no retrospective payment to HCA in relation to the funding for 2014/15 on the basis that agreement could not be reached
- b. To cease engagement with HCA in respect of Neighbourhood Services funding
- c. To note that since providing notice of the Council's intention to terminate the discontinuous sub lease that alternative arrangements for the provision carried out under that sub lease are being made to take effect from September 2015

3. Background

- 3.1 Despite considerable efforts to maintain a constructive working relationship with HCA it is clear that this has irretrievably broken down.
- 3.2 The damage to the relationship over the past nineteen months has created substantial and irreconcilable differences. The result is that the Council, as a responsible body for public funds, does not have trust or confidence in HCA's ability to prudently manage public funds, to demonstrate an acceptable level of care toward staff transferred to them from the authority in relation to their pension rights, or to develop a credible model for a sustainable future.
- 3.3 In 2010 the building and staff were transferred to HCA by the Council, following a long period of campaigning by HCA, to enable them to meet their stated aim of achieving financial independence. This was a unique arrangement and the first and only time the Council has agreed to transfer a major building asset (with a value of approximately £2 million) and staff team to enable Community Governance. Subsequently a 25 year lease was granted (with the option to extend for a further 25 years) at a peppercorn rate of £0.76 plus VAT per annum. Three years' funding of £879k (£293k per annum) for community

services was also provided. At the same time a discontinuous sublease was entered into for use of hired space by the Council in the Highfields Centre for adult skills and learning and children's and youth services with a value of £99k per annum for rent and service charges. In this time period HCA have also successfully bid for Council funding for other specific initiatives.

3.4 In 2013, when the three year agreement ceased, HCA sought further funding to the amount of £293k per annum. In order to give HCA further time to provide the Council with relevant information and a business plan funding of £73k was provided to HCA between December 2013 and February 2014.

3.5 Since the asset transfer to the HCA the Council now have in place a more robust policy framework for Community Governance and Community Asset Transfer. The arrangement with HCA is unique as it included an unprecedented level of financial support not in keeping with the Council's current Community Asset Transfer policy which requires interested organisations to demonstrate that they are financially sustainable. In their business planning, HCA needed to demonstrate a clear proposal for how they intended to reduce reliance on the Council's funding which is a clear objective for seeking Community Governance and utilise the assets of the building and staff to meet the stated aims of the organisation (ie to become economically independent and self-sufficient) but they have failed to do this.

3.6 Following discussion between the City Mayor and HCA in the spring of 2014, the Council sought to progress, subject to contract negotiations, to award HCA £200k for one year in 2014/15. This was for support towards the management and operation of Highfields Centre and contingent upon HCA providing a robust business plan and model to demonstrate its ability to become financially self sustaining.

3.7 After the proposed funding was offered in June 2014, there followed long and protracted discussions, and reluctance from HCA to enter the funding agreement due to the presence of key clauses that HCA did not like:

- The Council withholding a proportion of funding pending confirmation of the amount of the pension fund deficit as a result of HCA's unilateral decision in September 2014 to withdraw from the Local Government Pension Scheme (LGPS). This is known as a set off clause and was in the 2010 funding agreement with HCA. Withholding funding was necessary at the time to protect the Council as guarantor to the pension fund should HCA not reimburse the fund for the deficit; however the County Council as LGPS administrator advised in June 2015 that it no longer considers that the City Council has liability for any deficit, following agreement of a payment schedule with the HCA. It should also be noted that the HCA had not continued to maintain a bond or indemnity, as required in the original LGPS agreement to mitigate the risk to the pension fund and hence the Council.
- Seeking amendments to the Council's standard safeguarding clause which is included to reflect legal requirements, the multi-agency policy framework and best practice to protect children and vulnerable adults from abuse. It is not negotiable with service providers. The amendment sought appeared to be to enable HCA to employ staff without DBS clearance and remove the

- Council's opportunity to confirm compliance with the safeguarding clause.
- Rejecting the standard clause that would give the Council access without notice to the HCA premises to investigate a complaint or incident involving the delivery of the service (from the police or a whistle blower) or to monitor the delivery of the service and performance.
- Rejecting the clause inserted requiring HCA to maintain a positive working relationship with the Council in public and in private. This was added because of the experience during funding negotiations of HCA's adversarial approach to the Council as their principal funder.
- Seeking to reduce the target for service activity at HCA from 100,000 usages per annum to 83,000 per annum. The Council maintained that by being more efficient HCA, can, like many organisations including the Council, reduce costs without reducing service quality, and that based on the Council's experience the target was reasonable and had been previously met by HCA.
- In addition to these clauses, the Council asked for confirmation that the HCA Board had resolved to enter the funding agreement and for details of the broadly comparable pension scheme they are required to provide following their withdrawal from the LGPS.

3.8 By January 2015 HCA had still not agreed to the terms and conditions and no payments had been made.

3.9 In February 2015 the HCA Board reported to have reluctantly agreed to the conditions set out in the funding agreement in order for them to receive funding.

3.10 To summarise, since December 2013, following the end of the three year funding agreement, there has been a long, difficult and protracted negotiation between the HCA and the Council on a number of matters including:

- a) The expectation from HCA that along with the transfer of the building and staff in 2010 the Council would also provide significant levels of funding to HCA after the three year agreement ended in 2013.
- b) Reluctance from HCA to agree to the terms and conditions associated with the one year funding offered to HCA for 2014/15. HCA deemed several clauses in the funding agreement unreasonable and were still contesting these in January 2015, seven months after the funding had been offered.
- c) The unilateral decision by HCA to give notice on withdrawal from the Local Government Pension Scheme (LGPS) in September 2014, without engagement or consultation with the Council. HCA have not been able to demonstrate that they acted in a prudent manner on this matter nor that they took independent financial or legal advice. Their withdrawal has resulted in a significant and unnecessary liability of £162k through the crystallisation of a deficit on the pension fund, for which they have sought to blame the City Council as well as the County Council as LGPS administrator.

- d) In addition, despite repeated requests, HCA have not demonstrated how they will meet their legal obligation to provide a pension scheme that is broadly comparable with the LGPS for the staff transferred by the Council, resulting in concern over the HCA level of care for those staff previously in our employ. This obligation is a requirement of the Employee Transfer Agreement.
 - e) An initial expectation from HCA that the Council should provide additional funds over and above that which has been offered through the Community Services offer to help 'bail out' the organisation in relation to this pension scheme liability. This was refused.
 - f) An apparent lack of will to enter into any form of meaningful dialogue, or foster any form of positive relationship with the Council, and instead taking a stance that could only be considered argumentative and adversarial.
 - g) The lack of a credible business case for HCA moving forward, despite feedback to them on the business case put forward in 2014 and the offer of assistance to develop a more robust and meaningful plan to meet their stated aim of becoming financially independent.
- 3.11 Given the protracted and difficult engagement with HCA, consideration has been made to the consequences for HCA and the consideration that cessation of the Council's funding could present a financial challenge too great for the HCA to meet. The HCA's accounts for 2012/13 and 2013/14 have been reviewed and show that they have been reliant on Council funding for at least 70% of their income (79% in 2012/13 and 70% in 2013/14). The balance of approximately 30% has been generated through centre activities and grants from other organisations. HCA's accounts for the year ending March 2015 are yet to be published.
- 3.12 The 2013/14 published accounts show reserve funds of £671k at March 2014, of which £647k was unrestricted. These unrestricted funds were earmarked for asset replacement (£275k), programme support (£40k) and transforming services (£60k), with a remaining general reserve of £272k.
- 3.13 In the absence of published 2014/15 accounts, it is assumed that some of the unrestricted funds will have been utilised during 2014/15 given that the Council ceased funding in February 2014, although the Council has continued to pay for rented space within the building. In the absence of clear and robust financial future modelling and without the 2014/15 accounts being available to the Council, it is difficult to predict how long HCA may remain solvent unless they are able to obtain financial resources from alternative sources and/or reduce expenditure. This also depends on how much of the £647k of unrestricted funds is still available to support running costs.
- 3.14 The longer term financial viability of HCA has since transfer of the building and assets from the Council in 2010 been dependent on the HCA's ability to develop sustainable funding streams and associated expenditure levels and this remains the case.

3.15 Given the concerns outlined in this report the following is put forward in order to conclude the position regarding funding:

1. To make no retrospective payment in relation to funding for 2014/15 on the basis that agreement could not be reached
And
2. To cease engagement with HCA in respect of neighbourhood services funding

4 Discontinuous Sub-lease

- 4.1. In addition to the historical Community Services funding and the 25 year (plus 25 year extension option) lease on the building, the Council has a discontinuous sub lease with HCA for the use of space in the building at prescribed times.
- 4.2. The sub lease expired in November 2012 but it is currently “holding over” on the terms of the expired sub lease. The current rent is £50k pa plus a service charge (combined total capped at £99k pa) for space originally occupied by Adult Skills and Learning, Early Prevention and Youth Services.
- 4.3. The Council’s overall usage of space has varied in the 2014/15 financial year but not significantly. It is likely to change significantly in 2015/16. On this basis the Council have now given notice to HCA to end the sub lease. The two services utilising the agreement are Adult Skills and Learning for a variety of courses, and Early Years for pre-school provision for up to 24 children, run by Leicester City Council staff.
- 4.4. The options were to renegotiate usage on a room rental only basis or terminate usage altogether and withdraw completely from the Highfields Centre by September 2015 while establishing alternative sites /models to deliver provision in the area. Work has been carried out to assess the options for this provision in order to seek to minimise the impact on users.
- 4.5. Timing of the notice was important to enable the provision of adult skills classes through to end of this financial year and ensure planned classes are not disrupted to the end of the academic year in July 2015. In addition the early years’ provision is term time only and was due to break up for the summer on 12 July. Given that the sub lease is holding over the Council are obliged to serve at least one quarter’s notice in order to terminate the sub lease. On 22nd June 2015 notice to terminate the Council’s occupation of the Centre was served on the HCA, expiring on the 28th September 2015.
- 4.6. Given the significant cost of this arrangement in comparison to usual market rents, HCA were invited to provide an offer for the use of a reduced level of space at the Highfields Centre. Specifically the space previously occupied by youth services was no longer required, the requirement for early years’ space was increased from 5 to 7 days a week for an additional 9 weeks a year, and the space required by adult learning was reduced by 70%. Overall this amounted to a 50% reduction in space. Unfortunately the offer received was 40% greater (£140k) than the previous charge (£99k) and almost four times greater than estimated market valuation (<£50k) for the amount of space being requested.

- 4.7 Following receipt of this offer HCA were asked reconsider and urgently provide a revised offer within twenty-four hours. In response HCA disputed the Council's market valuation and sought to revise its offer by 10th July 2015 which also clashed with the end of the school term and the closedown of preschool and adult learning courses. This is significant as the Council has a duty of care to ensure that service users, particularly children and parents, are made aware of changes as early as possible.
- 4.8 On 3rd July 2015 the Council reluctantly informed learners and parents that the Council's adult skills and early years services will cease to continue from Highfields Centre as the Council will be vacating occupation of the Centre by September. Arrangements are in hand to close the preschool and relocate adult learning provision in order to maintain services at other nearby facilities for the next academic year.

5. Financial and other implications

5.1 Financial implications

The report is concerned with financial implications throughout, in particular the HCA's ability to move to financial independence, concerns over its ability to manage public funds appropriately and the potential implications of significant reductions in the Council's funding on the HCA's future prospects.

Colin Sharpe, Head of Finance, ext. 37 4081

5.2 Equalities Implications

5.2.1 The following range of services is offered HCC/HCA as indicated on their website on 17 July 2015:

- **advice service:** welfare benefits, housing, debt, immigration, nationality, education, general advice
- **sports and health:** sports facilities and sports activities
- **arts service:** courses – youth/community recording sessions; music production studio sessions for young people; creative youth, creative writing course; audio visual hire
- **venue hire:** main hall, two lounges
- **active youth:** arts & sports programme Friday and Saturday
- **employment training & business support:** employment and business support services
- **adult learning:** classes
- **children's pre-school group**

5.2.2 The funding provided to HCA referred to in the report was for sports, arts and non-specific community support services. No payment has been made for 2014/15 for reasons presented in the report. No financial accounts nor a more detailed business plan for HCA have been received for 2014/15. Therefore it is not possible at this point

in time to consider the actual or potential impacts of payment not having been made during 2014/15 without more detailed information from HCA.

5.2.3 The Council does commission youth service provision through a consortium that HCA belongs to, so there is no anticipated change in youth provision at HCC. The Council does not commission the advice service provided at HCC. The Council rents premises for two services which it delivers on site: adult learning classes and the children's pre-school group.

5.2.4 **PSED considerations:** The Council is mindful of its continuing responsibility to meet a range of needs of city residents, as required by our Public Sector Equality Duty under the Equality Act 2010. The original agreement with Highfields Community Association (HCA) to transfer Highfields Community Centre as a community asset was based on the anticipated community benefits arising from such an arrangement and this arrangement being an appropriate means for the Council to, in effect, continue to meet local community needs through services cited in this report.

5.2.4 The following considerations have been undertaken by the Council in regard to its Public Sector Equality Duty:

a) ensuring that it understands each of the populations affected by the proposal:

5.2.5 The Council has produced a compendium of key statistics for Leicester, which includes census 2011 statistics at ward level across the city. HCC is located within Wycliffe ward but its users span these ward boundaries and for some services reach across the city.

5.2.6 To complement demographic information presented in the compendium, the Council produces adults' and children's joint strategic needs assessments to inform key issues affecting the health and well being of local people in the city. The joint strategic needs assessments focus on demographic considerations, including ethnicity, as well as the social and environmental context which shapes need. Given that HCC is located in an area of deprivation, this is particularly relevant to understanding the needs of local people who use HCC services.

5.2.7 The City Mayor's Delivery Plan cites the main strategic themes for action and outcomes by the Council. The following delivery plan themes provide a strategic context for how different areas of activities provided by HCC fit within Council strategic priorities: a place to do business; a healthy and active city; providing care and support; our children and young people; our neighbourhoods and communities.

b) Being clear of the protected characteristics of those currently accessing HCC services:

5.2.8 Given the demographics of the area, and the range of services provided by HCC, the relevant protected characteristics are: age, ethnicity, religion or belief (given local profile) and likely disability given its prevalence across different groups and potentially disproportional impact because of deprivation in the area.

c) Understanding the potential impacts of the proposed recommendations/decision:

5.2.9 Of the three proposals presented in the report, two relate to funding considerations related to the transitional support provided by the Council for the original community asset transfer to HCA. The third proposal relates to the termination of the discontinuous sub lease for the provision of the adult learning and pre-school service at the Centre.

5.2.10 The original community asset transfer to HCA was carried out on the premise that they would be seek to become financially self-sufficient as an organisation in the delivery of the range of services they have on offer, and interim Council transition funding to support this outcome was provided. As indicated in the report, HCA have reserves in place to continue to fund HCC activities but the longer term financial viability of the Centre is uncertain once Council transitional funding is no longer provided. The Council has been unable to influence HCA practice through the breakdown of their working relationship as cited in the report, and on the basis of the governance arrangements in place, is unable to directly intervene in terms of taking mitigating actions that would reduce any potential adverse impact to continued service provision at the Centre.

5.2.11 The only Council services likely to be affected by the third proposal to no longer rent premises at the centre are adult learning and pre-school provision for reasons cited in the report. The Council will be able to relocate adult learning provision. Our assessment of childcare provision in the area indicates that there is a sufficiency of childcare spaces to meet need and the council is actively assisting parents to seek alternative pre-school places via its brokerage service. These are the only mitigating actions available to address this potential negative impact.

5.2.12 The above explanation sets out how the Council has ensured that it meets the first aim of the PSED, to eliminate discrimination. Its approach to strategic service needs and delivery across the city is inclusive in approach and informed by local population needs.

5.2.13 The second aim of the PSED is to advance equality of opportunity between different groups of people. The Council's key strategies, such as the City Mayor's Delivery Plan, set out how the range of services delivered by the Council and in partnership with others, help to promote equality of opportunity, particularly for those who are vulnerable and disadvantaged because of their social and economic circumstances. It is unfortunate that the partnership working arrangement between the Council and HCA has broken down and that this has affected Council use of the Centre as a local venue for service provision. However, alternative sites for delivery will ensure that initiatives contributing to equality of opportunity in terms of outcomes benefiting local users. It is not clear at present whether this breakdown in working relationships will affect service provision by HCA through the Centre. The Council has a strategic remit to ensure continued meeting of need and this is embedded in its strategic operating framework – the City Mayor's Delivery Plan. Although the outcome of these proposed funding decisions may affect HCA as a service venue and provider, it will not affect the Council's continuing to meet its PSED in identifying and addressing local need.

5.2.14 The final PSED aim for consideration is that of continuing to foster good relations. The breakdown of working relations between the Council and HCA could affect good relations between local residents and other groups within the city if they perceived that they were being disadvantaged because of services no longer

continuing to operate in the same manner (based on the termination of the Council's transitional support) by HCA through the Centre. From the perspective of the Council's understanding of its PSED responsibilities, it has not sought to end this provision that would affect meeting local residents' needs, and has a strategic framework in place against which it measures its continued meeting of local resident needs as assessed through its needs assessment and statutory service provision. The Council is committed to community cohesion, an inclusive city and meeting its PSED duties and has a variety of mechanisms in place to pursue these outcomes. Through its proposed actions, as set out in the report, the Council has sought to deliver the legal agreement for community asset transfer as proposed and entered into willingly by HCA. It is unfortunate that this working relationship with HCA has broken down.

Irene Kszyk, Corporate Equalities Lead, ext 374147

6. Consultations

6.1 This report has been compiled in consultation with relevant service areas in the Council.

6.2 The Ward Councillors from Wycliffe, Spinney Hills and Stonegate have been briefed by the City Mayor.

7. Summary of appendices:

Appendix A – Legal advice, not for publication

8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

The legal implications to the report are marked 'Not for Publication' because it contains exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended: i.e. 'Information relating to the financial or business affairs of any particular person (including the authority holding that information)'.

9. Is this a "key decision"?

No.