

Contains Confidential or Exempt Information	YES (Part) Appendices 1, 3, 4 and 5 contain exempt information (pursuant to para 10.4 (3) of the Access to Information Procedure Rules)
Title	Proposed letting of the former Acton Library
Responsible Officer(s)	Lucy Taylor - Director of Regeneration and Planning
Author(s)	Jessica Tamayao – Assistant Director of Strategic Property and Investment
Portfolio(s)	Cllr Julian Bell – Regeneration and Property
For Consideration By	Cabinet
Date to be Considered	15 th October 2019
Implementation Date if Not Called In	28 th October 2019
Affected Wards	Acton Central, South Acton,
Keywords/Index	Former Acton Library, Acton Town Hall, lease, disposal

Purpose of Report:

To present for approval the selection of a preferred bidder for the disposal of the former Acton Library building by way of a lease for 24 years.

1. Recommendations

It is recommended that Cabinet:

- 1.1 Note the outcome of the marketing exercise for the selection of a bidder for the grant of a lease as summarised in paragraph 2.11 below and in Confidential Appendices 1 and 4.
- 1.2 Approves the selection of Acton Arts Project as the preferred bidder for the disposal of the former Acton Library building by way of a lease for 24 years as shown on the plan in Appendix 2.
- 1.3 Authorises the Director of Regeneration and Planning following consultation with Director of Legal Services and Chief Finance Officer to agree the final terms and grant a lease of the former Library to the preferred bidder subject to full financial and non-financial due diligence in line with the draft Heads of Terms in Confidential Appendix 5.
- 1.4 Authorises the Director of Regeneration and Planning to either market the property again under the same criteria or go back to the SEN school as the

'Best Consideration' bidder should the selected preferred bidder fail to complete.

2. Reason for Decision and Options Considered

Background

- 2.1 In April 2013, before the opening of the new Acton library in the former Acton Town Hall in April 2014, Cabinet agreed to marketing of the former library building in anticipation of the relocation. In June 2014 Cabinet agreed the disposal of the building subject to final approval of the bidder.
- 2.2 5 bids were received, and these were assessed against the following criteria
 - The impact of the proposed use on the future viability of the town centre
 - The deliverability of the proposals – both in planning terms and in financial and operational aspects
 - The impact upon a listed building and its future safeguarding
 - The value of the offer
- 2.3 Curzon Corinthian were the successful bidders and the Council subsequently entered into an agreement for lease for 250 years with them in July 2015. However, Curzon Corinthian was unable to proceed on the original terms and subsequently terminated the agreement before a lease was granted.
- 2.4 The termination was reported to Cabinet on 14th November 2017 who authorised a new marketing exercise confirming that bidders were to be assessed against the same criteria as the 2014 marketing exercise.
- 2.5 The building has been occupied by Guardians since the library relocation who pay a small income to the Council. The Council is responsible for maintenance and FLAGE costs.
- 2.6 A new marketing exercise was undertaken earlier this year to let the former Acton library on a full repairing and insuring lease for up to 25 years. The building was marketed through HRH Retail, a niche retail & leisure agent. The building was advertised with extensive local and national coverage through targeted tenant marketing initiatives, contacting existing interested parties from the Council's records, online platforms such as Shop Property, PIP, EACH and their own website along with letting boards erected on the property. 5 group viewing days were held due to the considerable number of interested parties through July and August to enable potential bidders to view the building. Bids were invited on the basis of:
 - Commercial Terms - length of lease, rent, rent free, rent reviews, break clauses etc. and any conditionality
 - Proposed Tenant - full name and address of proposed tenant including Company Number (where applicable)
 - Demise - whether the offer relates to the whole building or the ground/upper floor in isolation

- Use - confirmation of the exact use or uses for the property including any supporting information. Potential uses were advertised as A1, A2, A3/A5, D1 or D2.
- Planning - what planning consent is required and what investigation works have been undertaken as to the likelihood of obtaining this for the proposed use
- Covenant Strength - accounts to be provided if an existing business or business case/viability information such as a business case if not
- Solicitors Details
- Timing - confirmation that a bidder could proceed to an exchange of an agreement for lease (AFL) within pre-agreed timeframes (even if subject to planning)

The marketing process commenced on the 6th June 2019 and the bid submission deadline was Friday 16th August 2019. Bidders were asked further clarification questions where required.

- 2.6 6 bids were received, and these have been assessed against the following criteria, consistent with the 2017 Cabinet approval.
- The impact of the proposed use on the future viability of the town centre
 - The deliverability of the proposals – both in planning terms and in financial and operational aspects
 - The impact upon a listed building and its future safeguarding
 - The value of the offer
- 2.7 The 6 bids comprised of the following uses:
- Cinema on the ground floor and charity for the arts on the first floor
 - SEN school for Autistic Children, whole building
 - Independent learning centre and sixth form, ground floor only, no proposed use for upper floor
 - Cinema, food hall, creative workspace, live music and café bar, whole building
 - Backpackers' hostel, whole building
 - Education centre for children of Eastern European background, whole building
- 2.8 The preferred bidder proposed by officers is the Acton Arts Project.
- 2.9 The Acton Arts Project proposes to set up a cinema on the ground floor, run by Arthouse Crouch End and a workspace for ACAVA (Association for Cultural Advancement through Visual Art) on the first floor, both of whom would pay a rent which would go towards the Council's rent and to operational costs. Works would be required before these 2 parties could occupy the building and it is planned that funds would be raised for these from a number of sources by all 3 parties above.

Assessment of the Bids

- 2.10 The 6 bids were assessed against the criteria as set out in detail in Confidential Appendix 1 and summarised above. The backpackers' hostel

was deemed to be a use not in line with the advertised suitable planning uses of A1, A2, A3/A5, D1 or D2. The ground floor only use was deemed to be not best use of the building without any planned use of the upper floors. The bid that included uses of cinema, food hall, creative workspace, live music and café bar required a significant upfront investment by the Council which is not available. 2 further bids (the education centre and independent learning centre) reflected a value that was significantly below the best consideration value (40% or less of that value).

- 2.11 A summary table with RAG rating of the assessment of the bids against the criteria is below

Bidder/Criteria	1. Impact on viability of high street	2. Deliverability of proposals (Financial, planning & operational)	3. Impact on a listed building & future safeguarding	4. Value of the offer
Cinema and workspace for creative arts (Acton Arts)		+		
SEN school for Autistic children		-		
Independent learning centre & sixth form				
Cinema, foodhall, creative workspace				
Backpackers' hostel				
Education centre for children of Eastern European background				

- 2.12 For criteria 4 - value of the offer, the SEN school have offered the highest rent and subsequently a higher overall value over a 24 year lease. They would therefore be the 'Best Consideration' bid and a higher offer than Acton Arts Project that offered the second highest rent.

- 2.13 For criteria 1 – impact on the viability of the high street, the Acton Arts Project is considered to have a significantly more positive impact on the future viability of the high street and overall social value contribution, including bringing investment value into the high street.
- 2.14 Key factors in the social value contribution of the Acton Arts proposal were considered to be:
- links with the local community
 - potential to increase visitor numbers
 - providing a diversified leisure offer
 - activates the high street during both the day and night
 - contributes to place making and
 - directly impacts the local economy through economic multiplier effects.
- 2.15 For criteria 2 – deliverability of proposals, both the Acton Arts Project and SEN school bids have risks around their financial deliverability, particularly in relation to raising the funds for high set-up costs. Acton Arts are heavily reliant on grant and community fundraising for these and there is no clear evidence of available funds for the SEN school set-up costs. Acton Arts are a registered Community Interest Company (CIC) whereas the company for the SEN school has not been set up yet and will need to register with Ofsted.

There are also planning and operational deliverability concerns around the SEN school in terms of lack of outdoor space for students, overall area appearing to be small for the number of students proposed and the drop off/pick up area for students on a busy high street.

These considerations led to a higher overall rating for the Acton Arts Project (Amber plus) than for the SEN school (Amber minus) under criteria 2 – deliverability of proposals.

- 2.16 The SEN school is intended to be an independent school with mostly privately funded placements and only a few spaces available (spaces dependent on viability) for government funded placements.
- 2.17 Based on the assessment of proposals against the criteria, it is considered that the Acton Arts proposal is preferable to the SEN school proposal, despite the bid not being the 'Best Consideration' bid.
- 2.18 As confirmed in paragraph 5 below, the Council's power to grant the lease is contained in section 123 of the Local Government Act 1972 which generally expects that where, as here, an asset is surplus to the Council's requirements the disposal will not be for less than 'best consideration' and as a result the Secretary of State's consent is required for any disposal for less than best consideration. However, where the Council is satisfied that a disposal will help it to 'secure the promotion or improvement of the economic, social or environmental well-being of its area' then the Council has the power to make a disposal at less than best consideration as long as the undervalue does not exceed £2,000,000 (two million pounds) in which case express consent would be required.

- 2.19 It is therefore open to members to consider the wider economic, social or environmental merits of the bids rather than simply the highest bid. If it is Cabinet's view that when considering the relative merits of the bids one or more of the bids would 'secure the promotion or improvement of the economic, social or environmental well-being of its area' despite not being the highest bid, then Cabinet can select a bidder which has not made the highest bid if it is considered that the bid is the best bid when considering and weighing up the all relevant considerations relating to each bid and the economic, social or environmental in particular.
- 2.20 Officers consider the Acton Arts Project may be considered to 'secure the promotion or improvement of the economic, social or environmental well-being of its area' and given that the overall difference in value is less than £2,000,000 (two million pounds), then, if members agree, it is possible for them to be selected as the preferred bidder. The Council's estates and valuation provider, Lambert Smith Hampton (LSH) have provided a valuation of the 'undervalue' which is included as confidential appendix 3.
- 2.21 The detailed assessment of the bids as summarised above is included in Confidential Appendix 1- Assessment of bids with more detail on the offers including clarification questions and answers included in Confidential Appendix 4 – HRH Retail report on offers.
- 2.22 Officers have sought to mitigate financial risk through draft Heads of Terms, included as Confidential Appendix 5, currently confirmed with 2 of the 3 parties with a requirement for the third party to agree to the terms in short order.

3. Key Implications

- 3.1 The end use which the old library building is developed for is important for the future development and regeneration of Acton town centre (particularly having regard to its status as an asset of community value) and this was considered as part of the assessment process.

4. Financial

- 4.1 No new funds are being sought. There will be costs for marketing, valuations and legal from the Property budget of c. £30,000 + VAT. If Acton Arts Project do not complete on the lease, £20,000 + VAT of this will be recoverable from them. Both Acton Arts Project and the SEN school have risks associated with funding, details of which are contained in Confidential Appendix 1. There will be a revenue stream commencing after the rent-free period due at the end of financial year 21/22 or in 22/23 which is profiled in Confidential Appendix 1 – Acton library bid evaluation and details of the intended contract in Confidential Appendix 5 – Draft Heads of Terms. The Heads of Terms provide for the property to revert back to the Council's full control should important milestones not be met by the proposed preferred bidder.

5. Legal

- 5.1 The Council has the power to dispose of property under section 123 of the Local Government Act 1972. This is subject to an obligation to obtain the best consideration that can reasonably be obtained (except for leases of seven years or less) unless the Secretary of State's consent (whether general or express) is obtained.
- 5.2 Under the Circular to the General Disposal Consent (England) 2003 it is confirmed that it is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities are advised not to divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action. The 2003 Consent was been issued to give local authorities the ability to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, there is a need for members to be aware of the need to fulfil the Council's fiduciary duty in a way which is accountable to local people when disposing of land at an undervalue.
- 5.3 The 2003 Consent means that specific consent from the Secretary of State is not required for the disposal of any interest in land which the authority considers will help it to 'secure the promotion or improvement of the economic, social or environmental well-being of its area'. Under the 2003 Consent, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).
- 5.4 The Council must comply with the Public Sector Equality Duty. This general duty is set out in s.149 Equality Act 2010. In summary, the duty requires the Council decision makers to have due regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 5.5 The Act makes clear that having due regard for advancing equality involves:
- Removing or minimising disadvantages suffered by people due to their protected characteristics.
 - Taking steps to meet the needs of people from protected groups where these are different from the needs of other people

- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

5.6 The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

6. Value For Money

6.1 The Acton Arts Project bid represents value for money as it gives a reasonable rent and also activates the high street, contributing towards both the day and night time economies. In addition, the bid proposes bringing in significant external investment to enable the use of the former library as a cinema and arts space.

6.2 The Acton Arts project bid, despite being a lower rental value than the highest bidder, achieves the value of the 250 year disposal to the previous successful bidder, Curzon Corinthian in 5-6 years of full rent.

7. Sustainability Impact Appraisal

7.1 Any new use for the former library building will involve modernisation of the building and this will introduce improved energy efficiency measures that would have been unlikely to have been undertaken if it had remained a public library

8. Risk Management

8.1 A key element of assessing the bids was the deliverability of their proposals in terms of planning permission required, the security of funding required and the long term viability of the use in ensuring the protection of the listed building. The recommended bidder has risks around their funding and around the delivery of building works to budget. The Council will mitigate these risks by providing non-financial assistance to the Acton Arts project in their bid for the good growth fund and will require regular updates on building works to monitor progress and costs. The bidder will also be required to liaise with English Heritage around the building works. However, it is likely that significant risks around funding capital works will remain and the preferred bidder may fail to complete on the lease if fundraising targets are not achieved.

9. Community Safety

9.1 An empty building with a meanwhile use represents a risk of it being damaged or used for unlawful purposes. By achieving a disposal for a long term use with an organisation on a full repairing and insuring lease, we reduce that risk.

10. Links to the 3 Key Priorities for the Borough

- 10.1 This meets the priority for a healthy and great place in that disposal of the library is a key element of the wider work to ensure the future vitality of Acton as a town centre

11. Equalities, Human Rights and Community Cohesion

A full Equality Analysis Assessment has been carried out and the results considered within the evaluation. Some bids exhibit positive impact in favour of children, disabilities or ethnic background but most are neutral. Members should have regard to these impacts as part of consideration of the bids.

12. Staffing/Workforce and Accommodation implications:

- 12.1 None. The library service has already relocated to the new library site in Acton Town Hall.

13. Property and Assets

- 13.1 The proposal is for the disposal on a surplus asset on a short term (24 years) leasehold basis with the freehold being retained by the Council.

14. Any other implications:

- 14.1 The building is listed as an asset of community value and the relevant statutory procedures have been followed. In particular a disposal of a lease of less than 25 year is not a 'relevant disposal' for the purposes of the Localism Act 2011.

15. Consultation

- 15.1 The preferred bidder will require planning permission and this will entail the appropriate local consultation and ensure that they do not conflict with the Council's planning policies. As it is a nationally listed building, the views of English Heritage will be considered as part of the planning process.

16. Timetable for Implementation

- 16.1 The table below shows the indicative stages for the Acton Arts Project bid.

Cabinet approval of the preferred bidder	October 2019
Exchange of contracts with preferred bidder	November 2019

Submission of planning application/change of planning use by preferred bidder	January 2020
Completion of contract subject to planning approval	July-August 2020

17. Appendices

Confidential Appendix 1 – Acton Library bid evaluation
Appendix 2 – Former Acton Library Lease plan
Confidential Appendix 3 – LSH Valuation report
Confidential Appendix 4 – HRH Retail report on offers
Confidential Appendix 5 – Draft Heads of Terms
Appendix 6 – Equalities Analysis Assessment

18. Background Information

Cabinet 14 November 2017

<https://ealing.cmis.uk.com/ealing/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/4975/Committee/3/Default.aspx>

ACV Listing

https://www.ealing.gov.uk/info/201071/localism_act/1504/community_right_to_bid/3

2003 General Consent

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7690/462483.pdf

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Jackie Adams	Head of Legal (Commercial)	12/9/19	Multiple dates	Entire Report
Nish Popat	Head of Accountancy	12/9/19	16/9/19	4. Financial
Ward Councillors – Central Acton, South Acton,		Briefing held 23/9/19	Verbal response 23/9/19	N/A
Cllr Julian Bell	Leader of the Council	26/09/19		N/A
Cllr Bassam Mahfouz	Cabinet member for finance	Briefing held 24/9/19	Verbal response 24/0/19	N/A
Ross Brown	Director of Finance	Multiple dates	Multiple dates	Entire report

Report History

Decision type:	Urgency item?
Key decision	No
Report no.:	Report author and contact for queries:
	Jessica Tamayao, AD of Strategic Property and Investment