

Finance and Resources Committee

2.00 p.m, Wednesday, 13 May 2015

Proposed lease of Custom House, Commercial Street, Leith

Item number	7.17
Report number	
Executive/routine	Executive
Wards	Leith

Executive summary

On 21 August 2014, the Council approved the acquisition of the Custom House, Leith, with the purchase completing on 7 April 2015. The Council also resolved that a Short Life Working Group be set up to oversee the restoration of the building for a museum/heritage purpose. The Group has identified the Scottish Historic Buildings Trust (SHBT) as a suitable partner.

This report provides an update on progress, and seeks approval to grant an initial five year, followed by a 99 year lease, to SHBT.

Links

Coalition pledges	P23
Council outcomes	CO7 ; CO19 ; C20
Single Outcome Agreement	SO1

Proposed lease of Custom House, Commercial Street, Leith

Recommendations

It is recommended that Committee:

- 1.1 Approves the grant of an initial five year internal repairing lease, and a further 99 year full repairing and insuring lease, of Custom House to the Scottish Historic Buildings Trust, on the terms and conditions contained in this report, and on other terms and conditions to be agreed by the Acting Director of Services for Communities and the Head of Legal, Risk and Compliance.

Background

- 2.1 On 21 August 2014, the Council approved a motion for the acquisition of Custom House, with the intention of securing an appropriate use of the building for museum/heritage purposes for the benefit of Leith and the wider city. The Council acquired Custom House on 7 April 2015.
- 2.2 The Council's strategy was to secure a suitable third party organisation that would create the museum/heritage facility accommodating Leith collections to enhance the city's cultural offering. Culture and Sport would assist in coordinating stakeholders, and the gathering of Leith collections for display. The intention is to deliver the new facility on a revenue neutral position to the Council.
- 2.3 The Council also approved the establishment of a Short Life Working Group (SWG), to provide guidance, and have oversight of the final proposals for the building's future.
- 2.5 The SWG has met on four occasions and is chaired by the Convener of Culture and Sport. Membership includes local ward councillors and senior officers representing relevant Council services. Interested third parties, including local groups, also attended with the Leith community well represented. The remit of the Working Group was:
 - To monitor and scrutinise regular progress updates and reports from the Project Team;
 - To provide feedback on the updates and reports;
 - To act as a sounding board on development proposals from third parties; and
 - To make recommendations to appropriate committees for progress reporting and decisions.

Main report

- 3.1 The SWG has identified the Scottish Historic Buildings Trust (SHBT) as a suitable third party to facilitate the restoration of the building, and enable it to be used for museum/heritage purposes to benefit Leith and the wider city.
- 3.2 SHBT is a charitable organisation dedicated to regenerating significant historic buildings, for the benefit of others, through conservation and sustainable re-use. It is a not-for-profit Building Preservation Trust and does not receive any core funding for its work. SHBT usually takes ownership or a long lease of a historic building to secure its re-development and sustainable future, taking the project from inception to completion, to ensure that the property is properly cared for and managed in the longer term.
- 3.3 SHBT proposes to lease Custom House for five years on internal repairing terms, while it sources an estimated £10m external funding, expected to be required to fully restore the building.
- 3.4 Provisional agreement has been reached with SHBT on the terms of the five year lease which are as follows:-
- Subjects: Custom House, Commercial Street, Leith;
 - Tenant: Scottish Historic Buildings Trust (SHBT);
 - Term: Five years;
 - Rental: £1 per annum, if asked;
 - Use: Arts/Community hub whilst plans are developed for a suitable use which will incorporate a museum/heritage facility to benefit Leith and the wider city;
 - Repairs: Internal repairing only. The Council as landlord to be responsible for external repairs;
 - Costs: Each party to bear their own costs; and
 - Other: The lease may be terminated, to be replaced by the long term lease if funding is obtained earlier than anticipated.
- 3.5 On the basis that SHBT is successful in raising the capital to complete the restoration of the building, at the end of the five year lease, or earlier if funding is secured, SHBT will be granted a 99 year lease.
- 3.6 The provisionally agreed terms of the 99 year lease are as per those for the five year lease other than it will be on a full repairing and insuring basis and the main use will incorporate a museum/heritage purpose for the benefit of Leith and the wider city.
- 3.7 SHBT has formed a partnership with Out of the Blue Arts and Education Trust (Out of the Blue) and, pending legal completion of the initial five year lease, have

been offered a month to month tenancy of the property at £1 per month under delegated powers.

- 3.8 Out of the Blue will operate from the building while SHBT work on the longer term project to restore the building in partnership with the Council and local community groups. Out of the Blue is a social enterprise with previous experience of restoring and occupying listed buildings. The let will help to mitigate the Council's costs pending longer term arrangements.
- 3.9 The SWG also considered a number of alternative options to the solution proposed as follows;
- Mothball the building until funds can be raised to restore it - This option would require the Council to meet the vacant building costs such as security, utilities, and essential repairs. The building will also continue to deteriorate if it is unoccupied, and will therefore increase restoration costs in the longer term. For these reasons this option was discounted;
 - Market the building for short and long term uses to obtain best value - The SWG rejected this on the basis that they have already identified a tenant as a suitable third party partner for the project, which would achieve the overall aims for the Council's purchase; and
 - Allow the building to be used by the Council to provide local services - This option was suggested as part of the Council's locality study, but rejected on the basis that it would not meet the criteria for which the building was purchased.

Measures of success

- 4.1 To secure a lease to an appropriate organisation in order to secure and fund the appropriate long term future use of the building with a museum/heritage purpose for the benefit of Leith and the wider city.

Financial impact

- 5.1 The total cost to the common good fund including fees and taxes for the acquisition of the property is expected to be approximately £700,000.
- 5.2 The letting to SHBT will alleviate the Council of responsibility for utilities, internal maintenance and other building costs. However, the Council will be responsible in the short and medium term for external repairs and insurance. These repair costs will be minimised by the initial capital expenditure as set out in paragraph 5.3. The insurance premium is estimated to be approximately £10,000 per annum and will be met from the Culture and Sport Revenue budget.
- 5.3 Discussions took place with SHBT to identify appropriate works to the interior and exterior of the building. Under the Scheme of Delegation, a budget of £110,000 was identified, by re-prioritisation of Culture and Sport's allocation of

Capital Asset Management Funds, to carry out minor works to allow the occupation of the building.

- 5.4 SHBT expects to raise approximately £10m to fund the restoration of the building within the next five years.
- 5.5 A feasibility study is required to develop a master plan, in consultation with the community, for the long term future of the building. This will develop and design the project so that an application can be submitted to external funding bodies, such as the Heritage Lottery Fund and Creative Scotland, to realise the estimated £10m required to restore the building. The cost of the feasibility study and master plan is estimated to be £50,000. Funding has been allocated for this from the balance of available resources as set out in the Council's approved budget motion.
- 5.6 The Council's legal fees are estimated to amount to approximately £10,000 to prepare the 5 and 99 year leases. These costs would need to be met from the existing Culture and Sport revenue budget.

Risk, policy, compliance and governance impact

- 6.1 The risk identified within the previous committee report was that if negotiations were not concluded before the date of acquisition, the Council would be required to meet the ongoing revenue costs such as security, rates, insurance and repairs. Should the building require some capital improvement/enabling works, the Council would also be required to meet these costs. The costs were considered as part of the 2015/16 budget process. This risk has been mitigated to an extent by securing a short term let for the building, and agreeing that the tenant(s) will be responsible for all utilities and running costs of the building and will undertake the cost of some repair works.
- 6.2 There is a risk that the chosen tenant may be unable to raise the full funding anticipated and may approach the Council for additional financial assistance.
- 6.3 There is a procurement risk if the Council seeks to impose too many conditions in the lease SHBT, i.e., to the extent that it could be construed as procuring services. This can be mitigated by ensuring that the lease is appropriately drafted.

Equalities impact

- 7.1 Allowing this building to be let in the short term will ensure that it is brought into use for a number of different activities, which will mean that it becomes accessible to the public for the first time in many years, enhancing the right to individual family and social life.
- 7.2 The building was acquired by the Council in order to secure appropriate use with a museum/heritage purpose for the benefit of Leith and the wider city. SHBT intends to invest £10m in restoring the building, which will enhance the right to productive and valued activities.

- 7.3 The future use will involve interpreting the history of Leith and make available collections to be viewed by the general public. It should also encourage an understanding of the rich history of the area, and the people who have lived and worked there in the past and present. The short term use will provide space for artists and other cultural arts. Both uses will enhance the right to education and learning.
- 7.4 As the building will be used for a number of purposes initially, it will be available for use by various diverse community groups. The longer term use should encourage an understanding of the history of the area, inspiring those who visit to participate in their community. This enhances the right to identity, expression and respect, participation, influence and voice.
- 7.5 The opportunity to occupy the building was not advertised on the open market on the recommendation of the SWG, which is considered to be representative of the community's views. SHBT aims to regenerate local communities and the historic environment by bringing historic buildings back in to use and, as such, it is considered to be an appropriate organisation to lease the building. While leasing the property in an off market arrangement may be a potential infringement of rights, it is considered to be proportionate and justified given the benefits outlined above.
- 7.6 A positive impact of the duty to advance equality of opportunity in terms of age and disability is that the building will become more accessible generally. It was not previously open to the public and will become fully accessible to all, including those with protected characteristics, in the longer term once the restoration is complete. However, as the building is category A Listed, access may be limited to some areas of the building until it is fully restored which, in the short term, may be seen as a negative impact in terms of the duty to eliminate unlawful discrimination. This will be mitigated by the building users managing the situation through their service delivery practices until the restoration takes place.

Sustainability impact

- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and the outcomes are summarised below:
- The proposals in this report will reduce carbon emissions because the new use for the building will not require specialised regulated heating and ventilation;
 - The need to build resilience to climate change impacts is not relevant to the proposals in this report because this is a Grade A Listed building, which is being used on a temporary basis whilst funding for its restoration is being sought; and
 - The proposals in this report will help achieve a sustainable Edinburgh as both the short and longer term uses for the building will secure an appropriate use of the building with a

museum/heritage purpose for the benefit of Leith and the wider city. The building will be brought back in to use for the local and wider community, and any natural resources used will restore and preserve the building for use by current and future generations.

Consultation and engagement

9.1 Consultation has taken place through the Custom House Short Life Working Group, whose members include various relevant local groups.

Background reading/external references

Minute of the City of Edinburgh Council, 21 August 2014.

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Links

Coalition pledges	P23 - Identify unused Council premises to offer on short low-cost lets to small businesses, community groups and other interested parties.
Council outcomes	CO7 - Edinburgh draws new investment in development and regeneration. CO19 – Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm. CO20 – Culture, sport and major events – Edinburgh continues to be a leading cultural city where culture and sport play a central part of the lives and futures of citizens.
Single Outcome Agreement	SO1 - Edinburgh's Economy Delivers increased investment, jobs and opportunities for all. Edinburgh Communities are safer and have improved physical and social fabric.
Appendices	None.