

**Report of Director of City Development**

**Report to Executive Board**

**Date: 16 May 2012**

**Subject: Friends of Bramley Baths and Community Asset Transfer**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Bramley and Stanningley	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

The Council's revenue budget 2012/13 supports the opening of Bramley Baths for 29 hours per week, and the Inner West Area Committee has agreed to support an additional 20 hours of opening until September 2012.

Expressions of interest were invited for a community asset transfer of the Baths, and the friends of Bramley Baths have submitted the only formal expression, with a view to taking on a full 25 year repairing and insuring lease.

The City Council may like to consider any future claim from the Friends in the case of liabilities which may arise from a 1904 Grade II listed building and swimming pool, and consider short term financial contingency support in the first year of operation.

**Recommendations**

- Executive Board delegate, to the Director of City Development, to approve a 25 year lease at a peppercorn rent, to the Friends of Bramley Baths, and agree that the Council would consider any reasonable claim from the Friends for future liabilities relating to a 1904 Grade II listed building and swimming pool.
- Executive Board agree to consider financial contingency support in Year 1 of the operation to overcome any immediate pressure caused by the asset transfer to the Friends of Bramley Baths.

## **1 Purpose of this report**

- 1.1 To inform the Board of progress with a potential community asset transfer to the Friends of Bramley Baths.
- 1.2 To recommend a community asset transfer that shifts from the Council some, but not all, of the liabilities and risks around the 1904 building and its operation.

## **2 Background information**

- 2.1 The Budget and Policy Framework agreed by Council on 22 February 2011 provided for the continued operation of Bramley Baths, opening for 29 hours a week from September 2011. The Council 2012/13 budget approved on 22 February 2012 did not change that position, although the Council continues to seek reductions in costs across its Sports buildings and staffing.
- 2.2 Inner West Area Committee of the Council supported an additional 20 hours opening per week from September 2011 until 31 March 2012 at a cost of £37,800. This was successful in retaining a lot of local use of the Baths and Inner West Area Committee agreed to continue this scheme until September 2012 at its meeting on 21 March 2012. In addition, £40,000 of Ward Based Initiative funds have been made available to support a potential community asset transfer, through targeted capital works.
- 2.3 On 22 June 2011 Executive Board agreed to invite expressions of interest in a community asset transfer of the Baths from a wide variety of sources. In late July 2011, Friends of Bramley Baths submitted the only formal expression of interest. Accordingly, Council officers and Members have since been working closely, with the Friends of Bramley Baths to explore a community asset transfer that might benefit the community and the Council.
- 2.4 The Friends of Bramley Baths currently exist as a Steering Group and are chaired by the former MP John Battle, and include two members from BARCA. If Executive Board agree to pursue this asset transfer they will apply to the Financial Services Authority to be registered as a Community Benefit Society.
- 2.5 The aim of the asset transfer is to initially maintain the current opening hours of 49 per week, whereas without Area Committee funding, the Council's budget only provides for 29 hours per week, and if this is successful, the Friends of Bramley Baths will look to increase the number of hours that the site is available for use. As Area Committee funding is unlikely to be provided for the long term, the recommendation of an asset transfer provides a stronger future option for this facility in west Leeds.
- 2.6 The Business Plan produced by the Friends of Bramley Baths, following advice from Council officers, projects a £10k year 1 deficit, and a break even trading position by year 2, and as with any community swimming pool operation, the balance between surplus and deficit is very narrow. The Friends of Bramley Baths do not guarantee 100% of risk transfer from the Council, and the plan seeks to share some ongoing risks.

Currently the Council bears the whole of the risks of operating the Baths, and if Members wish to maintain the 100 year old Baths as a continuing service to the community, any sharing of those risks is therefore beneficial to both the Friends of Bramley Baths and the Council

### **3 Main issues**

3.1 Despite the high quality Business Plan and impressive dedication of the volunteers to date, the Friends of Bramley Baths will face two major risks, and one minimal.

- the unpredictable and potentially substantial future liabilities around the 1904 building and swimming pool;
- the economic risk of income dropping, and current Bodyline cardholders transferring to other Council leisure centres or private competitors;
- employment/pensions of those employees who may be affected by the transfer under TUPE (considered low as number of staff to transfer will be low)

3.2 An independent survey of the building has been undertaken and noted that given the buildings age and use there is wear and tear. Also that due to the listed status, consent will be needed for all works and this could increase costs. However only a few major items were noted of significance. Meetings with officers have reassured the Friends of Bramley Baths that the buildings condition is satisfactory and there are no immediate issues.

3.3 Friends of Bramley Baths have requested a 25 year lease and this will be on a full repairing and insuring basis. They have built a sinking fund into their business plan. However, should any major items for repair occur, which is very possible given the age and use of the building, then these could easily exceed any funding available to the Friends of Bramley Baths. Members should be made aware that in the event of a major occurrence, the Council could be approached to provide some financial support to expedite repairs, or to provide match funding to attract an eligible grant. In this respect, the Council are in no worse a position than currently, when 100% of the liability falls upon the Council. This is not a matter for agreement with the Friends of Bramley Baths now, but is a risk for Members to note.

3.4 Bramley Baths includes a small gym and is part of the Bodyline offer. Usage statistics show that there are Bodyline members who use the pool at Bramley Baths but who also travel to Pudsey, Armley or Kirkstall for classes and to also use the Pudsey and Armley gyms. Those users, through their Bodyline membership charge, will have access to free swimming, gym and classes at Pudsey, Armley and Kirkstall whereas in future they would have to pay to use the Baths at Bramley. Alternatively they could move to the Friends of Bramley Baths and attend their classes and gym, although considered unlikely, as the Friends of Bramley Bath's programme will not be as comprehensive and the gym has much less equipment. This scenario would have a negative impact on their financial forecasts.

- 3.5 There are other risks associated with the Friends of Bramley Baths income, including competition from the private sector, competition from other Council facilities and dependency on income from schools. However, there are some positive aspects. New marketing sources will be available for the Friends of Bramley Baths so they may have a new customer base they can attract. They can use their contacts with the schools and the local community in a way that we cannot to promote themselves cheaply to pupils and their families.
- 3.6 Under TUPE, staff employed in the establishment immediately before the transfer automatically become employees of the Friends of Bramley Baths and transfer on their existing LCC terms and conditions of employment, including pensions. It is unlikely that Friends of Bramley Baths will be able to meet the cost of maintaining the existing pension provision for TUPE'd staff. Therefore, as the Council's ongoing employment and termination costs may be significantly higher than those accounted for by the Friends of Bramley Baths, this may place the Council in the position that the Friends of Bramley Baths may not wish to proceed with their application unless further financial assistance can be provided by LCC, although the number of staff to transfer is now considered to be minimal.
- 3.7 Sport staff will continue to be in regular contact with the Friends Group as they seek to implement the plan, and have already advised on the buildings, operation and equipment. As part of this process the Area Manager will continue to provide support and advice on operational matters during the period that the asset transfer is bedding in.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 In 2011 Friends of Bramley Baths consulted widely with the local community and schools about services, hours and programme in putting their proposals together. The Council assisted with the surveys of existing swimmers and other users. The community generally wanted more opening hours than the current 49 (and budgeted 29) per week, while schools wanted to continue to access swimming lessons locally, rather than at Armley, Pudsey or Kirkstall.

Consultation has taken place with the Executive Board Member for Leisure and Ward Members and Leeds City Council will seek to appoint an elected Council member to be a Director of the organisation known as Friends of Bramley Baths and any subsequent name or company that would be formed.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An Equality Impact Assessment has been completed and was published in June 2011. The key findings from the assessment have been considered and included in the consultation with the Friends of Bramley Baths while developing the Business Case and Heads of Terms.

#### 4.2.2 The key findings were:

- Community consultation to be held – this has been completed and was championed by Ward Members and the Friends of Bramley Baths, who have included their findings in their Business Plan.
- Community board to include diverse range of people from the local area – The Friends of Bramley Baths have established a steering group to manage the asset transfer and will elect a Board on an annual basis. The Board will establish regular accountability forums and annual meetings to elect Board Members according to the rules and practices agreed with the FSA and charity commissioners, to ensure local democratic accountability.
- Keep local people informed of the process and progress.
- Trade Unions to be consulted throughout the process.
- Heads of Terms to ensure the future service is non-discriminatory, has sound community governance and reflects the needs of the local community.

4.2.3 The effect of this decision should be broadly positive for all the people of Bramley & Stanningley, particularly children, older people and those without access to a car, as it would extend the opening of a local facility. If there is no transfer, this will divert swimmers and other users to Armley, Kirkstall or Pudsey Leisure Centres, involving additional travel time and costs, outside the restricted core hours. The Council and the Friends are working together to safeguard the rights of all existing staff under employment law and Council policies.

### 4.3 Council policies and City Priorities

4.3.1 By widening local access to healthy activity, for those without access to a car, the proposals should help reduce health inequalities in the city.

The proposed community asset transfer follows the guidelines agreed by Executive Board on 7 March 2012.

### 4.4 Resources and value for money

4.4.1 A successful Friends of Bramley Baths might save the council some future maintenance expenditure (possibly up to £30k per annum), but that could be at the expense of income diverted from nearby council sites and officer time providing technical support.

4.4.2 A transfer does have the potential for volunteer effort to extend the services and to lever in significant charitable or external funding for future building refurbishment or maintenance expenditure. This might divert some income back from other council leisure centres.

4.4.3 The council would retain the non-domestic rates budget as from 2013/14 this will probably be needed to offset the effect of the new charity claiming 80% mandatory relief and reducing the council's collection fund income.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 Prior to the Localism Bill, this sort of transfer was permitted by legislation and encouraged by many policy-makers. The proposed pepper-corn rent is consistent with the economic value of the building as a pool. The Friends are seeking a 25 year lease. The decision is subject to call-in. Draft Heads of Terms for the proposed lease are attached at Appendix 1.

4.5.2 Section 123 of the Local Government Act 1972 provides that a local authority shall not dispose of land for less than the best consideration reasonably obtainable without the consent of the Secretary of State. The Local Government Act 1972: General Disposal Consent (England) 2003 permits local authorities to dispose of land for less than best consideration where:

- the difference between the unrestricted value of the land and the consideration for the disposal does not exceed £2,000,000; and
- the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the area.
- In this case, the difference between the unrestricted value of the land and the consideration for the disposal is within the parameter indicated above. In addition, the disposal of Bramley Baths to the Friends of Bramley Baths will promote/improve the economic/social/environmental well-being of the area by providing for additional public sessions for swimming, fitness and other healthy activities in the local area, reducing journey times to other facilities and promoting more community cohesion.

4.5.3 The City Solicitor is therefore of the opinion that the proposed disposal falls within the terms of the Local Government Act 1972: General Disposal Consent (England) 2003.

#### **4.6 Risk Management**

4.6.1 As a direct consequence of the unique nature of the building ie a 100 year old pool with limited dry side facilities, there is a risk that the Friends of Bramley Baths might encounter unforeseen costs or loss of income, which could cause them to consider relinquishing the lease. The council would then have to decide whether to resume operations in the light of the economic and competitive situation or provide some contingency support. The Friends are seeking to minimise their income risks by getting schools to commit to ongoing lessons, building up local 'use-it or lose-it' footfall and exploring additional uses.

### **5 Conclusions**

- 5.1 The potential benefits to the community and the likelihood of positive, if modest, future savings appear to outweigh the risks to reputation and possible recovery costs if a transfer went wrong during its initial period.
- 5.2 On balance, it seems right to proceed with a transfer, even if consideration may have to be given in future to modest help if the building, TUPE or income risks were to crystallise in a way that threatened the viability of the Friends group. Such support would have to be subject to a rigorous assessment based on proven need and would be offered only in an exceptional circumstances.

## **6 Recommendations**

- 6.1 Executive Board delegate to the Director of City Development to approve a 25 year lease at a peppercorn rent, to the Friends of Bramley Baths, and agree that the Council would consider any reasonable claim from the Friends for future liabilities relating to a 1904 Grade II listed building and swimming pool.
- 6.2 Executive Board agree to consider financial contingency support in Year 1 of the operation to overcome any immediate pressure caused by the asset transfer to the Friends of Bramley Baths.

## **7 Appendix**

- 7.1 Draft Heads of Terms

## **8 Background documents<sup>1</sup>**

- 8.1 Friends of Bramley Bath Business Plan as updated March 2012
- 8.2 Building Survey of Bramley Baths (Wardle Grindrod 13 December 2011)
- 8.3 Equality and Diversity / Cohesion and Integration Screening Form

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.