

To: City Executive Board
Date: 15 October 2015
Report of: Head of Communities Services
Title of Report: Proposed Lease and monitoring arrangements for community centres

Summary and Recommendations

Purpose of report: To propose a framework for the determination of leases in respect of city council owned community centres occupied and operated by community associations.

Key decision? Yes

Executive lead member: Cllr Christine Simm

Policy Framework: Asset Management Plan, Stronger Communities

Recommendation(s): That the City Executive Board resolves to:

1. AGREE that for those community centres that have existing leases that have protected status under the Landlord and Tenant Act 1954 a new lease be offered on the terms set out in paragraph [8] of this report; and
2. AGREE that for those community centres that currently have a licence to occupy a notice to quit be served in respect of that licence along with a proposed replacement lease on the terms broadly set out in paragraph [12] of this report.

Appendices

Appendix 1 Lease Lengths and impact
Appendix 2 Confidential Appendix
Appendix 3 Risk Register

Current Position

1. There are currently 20 community centres operating in Oxford. By December 2015 5 will be run in-house by the Council (including part of Barton Neighbourhood Centre), 2 will be independently owned and run at Northway and Cowley as they are rebuilt by Greensquare housing association as part of the housing development. In addition 1 is leased by Jericho Community Association from St Barnabus Church. The other 12 together with part of Barton Neighbourhood Centre have been run by independent charitable bodies for a significant number of years. Each of these 13 Community Associations has either a licence dating from the mid-1980s, or is holding over on an expired lease.

2. Members have indicated that they prefer to remain involved in the provision of community centres in the city in order to protect that provision in terms of quality and location rather than simply carrying out an asset transfer to third parties. On that basis it is likely that involvement will continue through either the council operating centres or providing effectively rent free, maintained premises for community associations. By and large the council is content to enable the associations to have a free hand in how they operate the centre they occupy. However, these premises are provided at a significant public subsidy and it is right and proper that the council maintains a watching brief on the performance of the association and some form of sanction if that performance is unacceptable. It is how this oversight and sanction is reflected in lease arrangements that has been at the heart of the inability to reach a conclusion in the negotiation of lease terms.
3. The Council has been working with the associations and the Oxford Federation of Community Associations (OFCA) since December 2011 to update and clarify the situation in respect of the continued occupation of the community centres. It is in the interests of both parties to resolve this to agree leases that have sufficient term that enables community associations to bid for external funding and protect the interests of both the associations and the council. This report proposes a way forward that offers the potential to break the current impasse.

Proposals for new leases

4. For some time the Council worked with the OFCA to identify a single form of lease that could apply to all associations. The council put forward a proposal that met this objective but this was rejected by the federation as it meant some associations compromising on their existing rights. Recognising that a one size fits all approach would not be appropriate; this report proposes separating the associations into two broad categories.
5. The first group are those 5 that are currently holding over on a lease which has protected status within the meaning of the 1954 Landlord and Tenant Act. This means that the associations are entitled to a new lease broadly on the previous terms subject to a market rent. Previously a rent was not charged and the council sought other means to influence the community associations. The council always seeks to avoid creating new protected tenancies as they seriously impact on the landlord's rights. In negotiations regarding suitable lease terms the notion of any form of break clause that undermines the protected status of the existing tenancy has been strenuously resisted by these associations. In view that it appears unlikely that the council will be able to negotiate a new unprotected tenancy the only option if the council wishes to exert some influence is to fall back on the statutory position which is to offer a new lease on existing terms subject to a market rent.

6. The purpose of the rent is not to raise income but to act as a means of influence over the performance of the association. Therefore an offer of grant to cover the rent subject to agreed performance measures will be made. Associations are nervous about this approach as they rightly point out that the council cannot bind itself to a grant for the period of a long lease. It is recognised that this is a risk to associations which the council could seek to mitigate by a three year grant agreement (to be renewed each three years at the council's discretion) and the right of the association to quit the premises with six months notice.
7. The grant agreement and performance measures would have reference to a dispute resolution process the objective of which would be to resolve any differences thereby avoiding the withdrawal of grant part way through a three year grant period.
8. In summary the lease would be:
 - a. A protected tenancy under the Landlord and Tenant Act 1954,
 - b. Free of any break clauses (although at the end of the 25 year term the council would be able to refuse to renew if any of the statutory circumstances in the Landlord and Tenant Act 1954 applied such as redevelopment by the council).
 - c. Subject to a market rent.
 - d. For a period of 25 years to provide the security necessary to access large scale charitable funding or other means of raising capital.
 - e. With standard forfeiture provisions on tenant default or insolvency.
9. If the lease on this basis were rejected the council would take no action and the association would continue to hold over on their existing expired lease. The council would continue to keep the premises in a reasonable state of repair but without the comfort of the new lease would not invest to improve the premises.
10. The second and larger group of associations are those who currently occupy their centre by way of a licence to occupy. Such licences give little security and are not protected tenancies. The current licence gives the ability to the council to terminate the agreement on 12 months notice and the licence has no fixed term. They are therefore unattractive to the associations and are not now the Council's preferred means of granting occupation.
11. Officers advise that the council should take steps to avoid new protected tenancies being formed therefore a new un-protected lease is proposed for these associations.
12. The nature of these leases would be:

- a. A lease excluded from the protection provided under the Landlord and Tenant Act 1954.
 - b. Include a rolling break, similar to that in the existing licence (with no pre-conditions attached).
 - c. Be for a term of 25 years.
 - d. Be rent free.
 - e. With standard forfeiture (termination) provisions on tenant default or insolvency.
13. Such a lease would provide an appropriate level of security and comfort to both the Council and associations. It is recommended that the existing licence arrangements are formally ended and a new lease is offered at the same time.
14. Where there are concerns about the performance of an association that may lead to its lease being terminated for default (forfeiture) the dispute resolution process mentioned above would be invoked. It is hoped process will be agreed with the working group looking at the community centre strategy. That group includes councillors, representatives of the federation and the Oxfordshire Council for Voluntary Organisations.

Financial Implications

15. There are none arising directly from the implementation of this report. The agreement of long leases should improve the ability of associations to attract charitable funding and where appropriate raise capital by other means.

Risk

16. A risk register is included at Appendix 3.

Climate change / environmental impact

17. There is no impact to this recommendation

Equalities impact

18. There are no equalities implications to this recommendation

Legal implications

19. The council will need to ensure notices are correctly served on the Associations currently occupying under licence and that the correct procedures are followed for these associations to ensure they do not obtain security of tenure under their new leases.

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List of background papers: none