

CABINET

16 December 2014

Title: The Broadway Theatre – New Management Arrangements	
Report of the Leader of the Council	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Summary: <p>Cabinet agreed a new vision and strategy for Barking Town Centre at its meeting in September 2014. A key part of that vision is for Barking to become East London's cultural hub building on the sector's presence at the Ice House Quarter. Central to that is enabling and supporting the Borough's communities and businesses to realise their creative potential. The Broadway Theatre is a key cultural asset for the Borough, a hub for creative ambition, a draw for London's world class cultural institutions and a focus for live performance. Enabling the theatre to develop and extend its role even further will support the achievement of the Council's vision for the sector, the Borough and Barking town centre.</p> <p>Cabinet has previously agreed in principle (8 April 2014; minute 110 refers) to transfer the management of the Broadway theatre to Barking and Dagenham College via a lease arrangement on a commercial rent and full repairing base; however, at that time Members raised a number of queries about the proposed new management arrangements that needed to be clarified to allow them to make an informed decision about whether to proceed with the assignment of the lease.</p> <p>This report provides further information about the new way of working that is proposed for the Broadway, which is expected to bring the following benefits:</p> <ul style="list-style-type: none">• An ongoing revenue saving for the Council.• The future of the venue as the Borough's only dedicated performing arts venue would be secured.• Opportunities for local young people to gain skills and employment in the creative industries would be greatly enhanced. This will also support the development of the creative industries hub centred at the Ice House Cultural Quarter in Barking.• The range and quality of the venue's professional and community programme would be improved through a partnership relationship with the Barbican Guildhall.	

The new role for the Broadway will also form a key element of the proposal to develop, in conjunction with the GLA, an Artist Enterprise Zone in the Borough, which would assist in improving international competitiveness by sustaining the capital's world class artists and creative businesses in successful clusters, and would also address declining affordable workspace provision for artists and creative businesses in London.

The report seeks approval to transfer the venue to the Barking and Dagenham College.

Recommendation(s)

The Cabinet is asked to:

- (i) Authorise the Chief Executive, in consultation with the Head of Legal and Democratic Services and Chief Finance Officer, to grant a lease on 1 April 2015, or sooner, for the Broadway theatre to Barking and Dagenham College to expire on 31 August 2023, on the following terms:
 - (a) a commercial rent and full repairing and insuring basis; or
 - (b) a peppercorn rent.
- (ii) Agree, if a commercial rent is approved, to provide a grant to the College that is equivalent to the rent that would be paid for the duration of the lease on the basis that the shared vision for the theatre is being successfully delivered;
- (iii) Agree to commit to make an additional annual revenue contribution of £50,000 to the Barking and Dagenham College for a guaranteed period of three years from April 2015, which will be used to support the ongoing provision of a professional performance programme at the venue and to enable access by local arts organisations and community groups;
- (iv) Agree to commit up to £500,000 capital programme investment to address essential works that have been identified in the recent condition survey of the building and other improvements that will support the new way of working that is envisaged for the venue;
- (v) Agree to compensate the Barking and Dagenham College for redundancy costs that may be incurred by them for any Council employees who are redeployed to the College under TUPE legislation within twelve months of transfer but payments will be capped at the level the staff would have received if they had remained employees of the Council; and
- (vi) Agree, in principle, to Barking town centre becoming London's first Artists Enterprise Zone and for officers to undertake further work with the Greater London Authority to define an AEZ programme, which will be the subject of a further report to Cabinet for approval prior to implementation.

Reason(s)

The proposal is intended to assist the Council in making better use of its resources and assets. Through its performance and participatory activity programmes, the Broadway provides positive cultural and employment related activities for young people as well as opportunities for social interaction, improving physical and emotional health, lifelong

learning for work, and volunteering for the wider community. In doing so the venue contributes to the achievement of the Council's priority to:

- Growing the borough – develop a skilled workforce and improve employment opportunities; and support investment in housing, leisure, the creative industries and public spaces to enhance our environment.

1. Introduction and Background

1.1 At its meeting on 8 April 2014 (minute 110 refers) Cabinet resolved:

- (i) To approve, in principle, the lease of the Broadway Theatre to Barking and Dagenham College on a commercial rent and full repairing base; and
- (ii) That a further report be presented to Cabinet to seek approval to formally assign the lease, which may include a variation of the rental terms.

1.2 However, the report identified a number of key issues which required clarification before it would be possible for Members to make an informed decision about the merits of this proposal. These are set out in the issues section of this report at paragraph 2.9.

1.3 The focus of this report is to provide Members with further information about these issues so that a decision can be taken on whether to proceed with the transfer of the venue to the Barking and Dagenham College via a lease.

The Broadway theatre

1.4 The Broadway was originally the Barking Assembly Hall, designed in the 1930s as an extension to the Barking Town Hall and completed in 1962. It was used sporadically for a variety of events ranging from ballet to boxing.

1.5 In 2003, following capital investment by Barking and Dagenham College and the Council, the Broadway opened its doors as a professional theatre and home to the College's Department of Performing Arts and Technical Theatre.

Facilities

1.6 The venue has the following facilities:

- an auditorium with flexible seating that can seat up to 341 or up to 850 for a standing event.
- an attractive foyer area that is used for informal performances, social events and corporate hospitality.
- high quality work spaces for Barking and Dagenham College Performing Arts and Technical Theatre Department, including music studio, media suite, dance studio and two rehearsal rooms.
- café, bar and box office.

Programme

- 1.7 The Broadway theatre is the principal performing arts venue in the area and a cornerstone of the cultural offer in the Borough.
- 1.8 The main areas of current activity are as follows:
- Providing a popular performance programme – developing new audiences for professional theatre, comedy and dance that are entertainment based, accessible in both content and price, with a focus on attracting greater numbers of families and members of diverse communities.
 - Participation/education programme – the Broadway Youth Theatre, professional work for and with schools, including workshops and residencies, partnerships with other local arts groups, schools networks and placements for young people.
 - Home to the Barking and Dagenham College School of Performing Arts and Technical Theatre, where young adults are trained for employment in the creative industries in a real and commercial learning environment.
 - Hiring out – the venue is hired out to other arts organisations and for social events and meetings.
- 1.9 In 2012/13 the venue presented a total of 187 performances and events which attracted a total audience of 27,282. It is estimated that this will increase to c30,000 for 2013/14.
- 1.10 Further information on the Broadway programme can be found on the theatre's website: www.thebroadwaybarking.com.

Governance arrangements

- 1.11 In 2003, the Council entered into a twenty year facility management agreement with the Barking and Dagenham College for the operation of the theatre and established a new company with limited liability and charitable status (The Broadway Theatre Company Ltd.) to manage the venue on a day to day basis.
- 1.12 The College invested £1.8 million to renovate the theatre and makes an annual contribution of £100,000 towards running costs. In return they are guaranteed exclusive use of the theatre's facilities for about three days each week so that their students can gain experience in a real work training environment. It is not possible to programme the theatre for professional or community use during these times.
- 1.13 There are no break clauses in the Facility Management Agreement, which also sets out that if the Council were to terminate the agreement with the College then a repayment of their capital investment would fall due but which reduces on a sliding scale over the life of the agreement.
- 1.14 If, for example, the Facility Management Agreement was terminated by the Council in 2014 (the eleventh year of the agreement) then the payment to the College would be £618,000.
- 1.15 The Council and College subsequently decided to wind up the Broadway theatre company and the venue was brought 'in house' by the Council in July 2012, which is the current management arrangement.

- 1.16 The terms and conditions set out in the Facilities Management Agreement remain in place and are legally binding. When the venue came back 'in house', the College's use of space at the Broadway was formalised via a lease for those areas of the building that are solely used by them and through a licence for those areas that are shared with the Council. Both the lease and licence are co-terminus with the end of the original Facilities Management Agreement in 2023.

2. Proposals and issues

Proposal

- 2.1 The proposal is to transfer the management and operation of the Broadway theatre to the Barking and Dagenham College via a lease that would be co-terminus with the existing Facility Management Agreement and would end in 2023.
- 2.2 It was resolved by Cabinet in April 2014, that in principle the lease will be on a commercial rent basis but that there may be a variation of the rental terms.
- 2.3 It would be against normal Council policy to offer leases on a peppercorn basis, however, it is included as a choice for Members in this instance in order to secure a successful conclusion to the negotiations with the College, enable the transfer and realise revenue savings. This does give away control of the asset with much more limited ability to influence its use and hold to account the lessee compared to a commercial rent and rent subsidy arrangement, as reflected in the advice of the Chief Finance Officer, but is believed that the wider benefits of the arrangement with the College in this example outweigh that. Accordingly Members are recommended to consider a peppercorn rent as an alternative.
- 2.4 If a commercial rent arrangement is the preferred option for Members, it is proposed that the Council agrees to provide a grant to the College that is equal to the rent that would be paid for the duration of the lease, The grant payment would be dependent on the College continuing to work towards delivering the joint vision for the venue that is set out in this report and the practical arrangements for this will be contained in a Community Use Agreement.
- 2.5 It is also proposed that the Council will make an additional revenue contribution of £50,000 for a guaranteed period of three years, which would be used to support the ongoing provision of a professional performance programme at the venue and to enable access by local arts organisations and community groups.
- 2.6 Furthermore that up to £500,000 capital programme investment will be made by the Council to address essential works that have been identified in the recent condition survey of the building and other improvements that will support the new way of working that is envisaged for the venue, but in that order.
- 2.7 TUPE legislation will apply and so the staff on the establishment at the Broadway will be redeployed to the College.
- 2.8 Finally it is proposed that redundancy costs that may subsequently be incurred by the College in relation to former-LBBD employees within the first twelve months of operation following transfer will be met by the Council.

Benefits

- 2.9 If realised, it is considered that this proposal will provide the following benefits to the Council:
- An ongoing revenue saving of c£240,000 but this would reduce if any borrowing costs are incurred in relation to condition survey related works that may be required.
 - The future of the Broadway as the Borough's only dedicated performing arts venue would be secured and so further strengthen Barking town centre's role as East London's cultural hub.
 - Opportunities for local young people to gain skills and employment in the creative industries would be greatly enhanced. This will also support the development of the creative industries hub centred at the Ice House Cultural Quarter in Barking.
 - The range and quality of the venue's professional and community programme could be improved through a partnership relationship with the Barbican Guildhall.
- 2.10 The new role for the Broadway will also form a key element of the proposal to develop, in conjunction with the GLA, London's first Artists Enterprise Zone (AEZ) in the Borough, which would assist in improving international competitiveness by sustaining the capital's world class artists and creative businesses in successful clusters, and would also help to address declining affordable workspace provision for artists and creative businesses in London.
- 2.11 The Council will work closely with the Greater London Authority to develop an AEZ programme to achieve outcomes such as support for the competitiveness of the sector in the Borough, opportunities for creative businesses and young people, and an enhanced reputation for the Borough and for London.
- 2.12 Due to the unique nature of this development, only in-principle support for the Artist Enterprise Zone is requested from Members at this time. A further report will be presented to Cabinet that clearly sets out the benefits as well as any cost implications that may result from the establishment of the Artist Enterprise Zone to enable Members to make an informed decision about whether to proceed.
- 2.13 The proposed vision for the Broadway is attached at **Appendix 1**.

Issues

- 2.14 A response to the issues that were identified in the report to Cabinet (8 April 2014) is set out below:
- (a) **The transfer of responsibility of all revenue costs associated with the operation of the Broadway to the College has not been confirmed**

The Principal and Chief Executive of the College has written to the Leader of the Council (01/10/14) to confirm that the College "*will be responsible for all of the costs associated with the operation and management of the venue from the date that the lease is assigned*".

However, this does not mean that the Council will not be providing support to the venue after it has been transferred to the College.

Members should note that this report recommends that the Council commits to the following: to meet the cost of any redundancy payments that may be incurred following the transfer of the venue to the College for a period of up to 12 months (it is estimated that the maximum liability in this respect will be £25,000); a financial contribution of £50,000 per year for at least three years to support the delivery of the venue's performance and participatory programme; a grant to cover the commercial rent; and £500,000 capital programme investment in the venue.

- (b) At this time it is unclear what the College's proposed governance arrangements will be for the Broadway and how the Council can ensure that it retains an appropriate level of influence in relation to service development and delivery.**

As part of the discussions around the draft heads of terms for the lease, it has been agreed that the existing Facilities Management Agreement will be amended to incorporate a Community Use Agreement (CUA) to be updated on an annual basis.

The CUA will embed partnership working to ensure that the venue is successfully delivering against the priority objectives of the Barking & Dagenham College and the Council and provide a structure that will enable and encourage effective joint working between the Broadway and local arts organisations to get more local people involved in the arts.

- (c) A lease could hamper any future development of the Broadway site by the Council, if this were to be considered appropriate. To mitigate against this it is proposed that a condition of the lease is that it can be wound up by the Council if it is intended to re-develop the site.**

It is intended that the lease will be co-terminus with the existing Facility Management Agreement (FMA) and that the current and legally binding position in relation to termination as set out in the FMA will also apply in the new lease.

Whilst there are no break clauses envisaged for either party, the FMA allows the Council to terminate the lease at any time; however, as set out above a penalty payment will apply.

- (d) There has as yet been no clarity provided by the Barbican Guildhall on the 'offer' they will be providing to support the development of the quality and range of Broadway programme and over what period.**

It is envisaged by the College that the Barbican and London Guildhall School of Music & Drama will base provision at the Broadway extending the cultural links to the east. In partnership with the Broadway, the Barbican and Guildhall will augment their commitment to building sustainable relationships with communities within East London.

Initial joint planning has led to the Broadway already housing Young Peoples' Academy, Open Arts Lab activities, Barbican in a Box, apprenticeship provision and links to their new Performance, Enterprise and Outreach degree.

Other ventures currently being discussed by the College include guest programming at The Broadway, supporting extensive art award provision for the region and programming for the Borough's 50th anniversary celebrations.

The Creative Industries in the UK covers a range of sectors, from advertising and film, media, design and digital. It is anticipated that the Broadway will offer affordable workspaces for digital start-ups. (Links with the Barbican *Open Artist Lab* will help populate the venue with artists who can demonstrate a commitment to living and working in the borough).

It is expected that new creative companies will be offered spaces, resources and offices in exchange for their support for creative and education programmes. (Regular *Open Lab* events will introduce new arts practitioners to the Broadway audiences, but also establish relationships with SME's. This will create a sustainable creative ecology: from training through to employment; and encouraging business and artist to stay in the borough).

- (e) **There is a risk that in becoming a 'learning centre' the Broadway could be predominantly student focussed to the detriment of the professional and community performance programme, which is valued by the Council.**

The vision and programming plan for the Broadway is to be a 'hub' for the cultural and education network locally. In addition, primarily, it will enhance the creative and employment opportunities for the residents of the borough, through SMEs in creative industries and through its attraction to new and established artists to work in the Broadway and in its local network of creative industries.

The proposed vision for the venue is attached at Appendix one. It will be important that the Community Use Agreement, referred to above, clearly sets out what the expectations and targets will be in relation to the venue's performance and participatory programmes.

- (f) **Until the condition survey has been produced, it is unclear what investment may be required to the structure, mechanical and electrical installations and fabric of the building.**

The condition survey has been produced and accordingly this report recommends that up to £500,000 capital funding is committed to meet the costs of essential works and other improvements.

The College will be responsible for all repairs and maintenance for the venue for the duration of the lease.

- (g) **The extent to which the new management arrangement will impact on the ability to lever in funding for the Broadway from Arts Council England (ACE) is unclear. However, it is considered unlikely that ACE will fund a 'learning centre' arrangement.**

It should be the case that there will be elements of the Broadway's programme that would be eligible for Grants for the Arts funding from Arts Council England. However, this is an increasingly competitive process.

3. Financial implications

Financial implications completed by: Roger Hampson, Group Manager – Finance

- 3.1 The net controllable budget for the Broadway in 2014/15 is £380,000.
- 3.2 This budget includes committed funding of £40,000 as match funding for the Creative Barking and Dagenham project. A final payment of the same amount will be due in 2015/16.
- 3.3 The revenue budget also includes an element of the costs associated with staff who spend a proportion of their time supporting the management and operation of the Broadway but who will not transfer to the venue under TUPE legislation.
- 3.4 Further points to be considered are that this report recommends that the Council commits to meet redundancy costs that may subsequently be incurred by them for any Council employees who are redeployed to the College under TUPE legislation within the first twelve months of operation following transfer. It is estimated that the maximum liability for this will be £25,000.
- 3.5 The report also recommends that a revenue payment of £50,000 per year for a guaranteed period of three years will be made to the College to support the development and delivery of a professional arts programme at the venue and to encourage community access.
- 3.6 When these various factors are taken into account, and assuming that the Broadway transfers to the College on 1 April 2015 or sooner, it is estimated that a revenue saving of £200,000 will be realised in 2015/16, rising to £240,000 in 2016/17. There will be sufficient budget available to fund an annual revenue payment of £50,000.
- 3.7 It is proposed to lease the theatre to the College either on a peppercorn rent or on a commercial rent and full repairing basis. If Members agree to a commercial rent it is intended that a grant will be provided to the College to subsidise the amount of market rent payable. This will be cost neutral to the Council as the commercial rent income will fund the rent subsidy payment. A commercial rent and rent subsidy arrangement would be in line with the Council's market rent policy. The amount of the market rent and the annual grant is to be determined. The granting of a peppercorn rent would have the same financial outcome for the Council but would result in the relinquishing of substantially more control and influence over the use of the asset. An arrangement with a rent subsidy payment which has the scope to be reviewed periodically to ensure that the organisation is complying with the terms for the subsidy is a much stronger tool to ensure the delivery of the Council's objectives than the granting of a long term lease with a peppercorn rent. It is therefore the recommendation that the lease should be on commercial rent terms with a rent subsidy offered to the College.

- 3.8 Up to £500,000 of capital is to be committed from the Council's invest to save budget to address essential works identified in a recent condition survey and other improvements. If the service has to meet the cost of borrowing this amount, there will be an annual cost of c£40,000, which will need to be top sliced from any saving that is anticipated from the Broadway revenue budget on top of the figures outlined above.

4. Legal Implications

Implications completed by: Jason Ofosu, Property Lawyer

- 4.1 This report seeks approval to grant a lease to 2023 for a commercial rent or peppercorn rent to the Barking and Dagenham College with the Council retaining the freehold interest.
- 4.2 The Council and College will agree heads of terms for the leasing arrangements. The Chief Executive in consultation with the Chief Finance Officer should have final approval of the Heads of Terms in consultation with the Head of Legal and Democratic Services.
- 4.3 Section 123 Local Government Act 1972 and the Council's Land Disposal rules require land to be disposed of at market value. The Council has a general power of competence under section 1 of the Localism Act, although as always its application of these powers must be carefully considered and appropriate to the relevant circumstances. Section 1 of the Localism Act allows the Council "to do anything that individuals generally may do". Therefore the Council can decide the rent does not have to be market value since the lease holder is acting for the benefit of the Council, its area or persons' resident or present in the area.
- 4.4 Any lease that may be agreed should be a full repairing and insuring lease so that the Council does not bear the cost of repair and maintenance of the Property. The Legal Practice should be consulted on the preparation and completion of the lease.

5. Other Implications

- 5.1 **Risk Management** - The risks association with this proposal are considered in the issues section of this report (para 2.9).
- 5.2 **Contractual issues** - The legal implications section sets out the Council's powers in relation to this matter. Legal Services will be fully consulted and will prepare all the necessary legal documentation.
- 5.3 **Staffing issues** - If Cabinet agrees to a lease then the Council employees working at the Broadway will transfer to the College in line with TUPE legislation.

Staff have been briefed around the implications of the specific proposals set out in this report. Formal consultation has started (20/10/14) in line with the Council's change management policies.

As part of the negotiations with the College, it will be necessary for the Council to meet any redundancy costs that may be incurred for any former Council employees within the first twelve months of operation following transfer.

- 5.4 **Customer impact** - It is expected that, if implemented, this proposal would see a greater focus on provision for young people. It will be important to ensure that the accessibility and attractiveness of the venue's professional performance programme for the current customer base and the commitment to provide opportunities for local people and groups to participate in the arts is maintained.
- 5.5 **Crime and Disorder Issues** - The Council has a statutory duty to consider crime and disorder implications in all its decision making. It is expected that the Broadway will continue to provide a wide range of activities and quality facilities, which will provide positive activities for all residents.
- 5.6 **Safeguarding Vulnerable Adults and Children** - It will be a condition of use that the College has appropriate safeguarding procedures in place.
- 5.7 **Property/Asset issues** – it is intended that the terms of the lease will require the College as lease holder to repair, maintain and insure the facilities at the Broadway.

There are capital investment requirements that have been identified in a condition survey of the venue that will need to be implemented by the Council over the next five years. These can be summarised as follows:

Mechanical	£145,000
Electrical	£30,000
Building	£413,000

The condition survey sets out a schedule for the improvement works, which shows that about half of the expenditure will not be required until year five (2018/19).

This report recommends that the Council commits up to £500,000 capital programme investment to address essential works that have been identified in the recent condition survey of the building and other improvements that will support the new way of working that is envisaged for the venue, but in that order. Whilst this commitment will not address all of the works identified in the condition survey, it is considered to be adequate to address the key issues.

On assignment of the lease the College will be responsible for all repairs and maintenance that is required at the venue for the duration of the lease.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1 – The Broadway Theatre New Vision