

ST DAVID'S HALL

Appendices 1-3 of Appendix A, and Confidential Appendix B are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 of Schedule 12A of the Local Government Act 1972. It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Purpose of the Report

1. To provide background information to Members to aid their scrutiny of the report to Cabinet, titled '*St David's Hall*', which is due to be considered by Cabinet at their meeting on 13 July 2023.

Structure of papers

2. Attached to this cover report are the following appendices:
 - i. Appendix A – report to Cabinet titled '*St David's Hall*.'
 - a. Confidential Appendix 1 – Legal Advice and Agreements
 - b. Confidential Appendix 2 – Market Exercise Summary
 - c. Confidential Appendix 3 – Surveyors Letter
 - d. Appendix 4 – Single Impact Assessment
 - ii. Confidential Appendix B – Repairs Schedule
3. Members should note that **Appendices 1-3 of Appendix A and Appendix B** are exempt from publication. Members are requested to keep this information confidential, in line with their responsibilities as set out in the Members' Code of Conduct.

Scope of Scrutiny

4. At their meeting on 13 July 2023, the Cabinet will consider a report that seeks approval to transfer the business of St. David's Hall to Academy Music Group (AMG), via a Business Sales Agreement and Full Repairing and Insuring Lease.

5. During this scrutiny, Members have the opportunity to explore:
 - i. The proposed business sale agreement and lease – at **Confidential Appendix 1**
 - ii. The draft Memorandum of Understanding – at **Confidential Appendix 1**
 - iii. The Repairs Schedule information contained at **Confidential Appendix B**, previously requested by Committee
 - iv. The financial, legal, property and HR implications
 - v. Whether there are any risks to the Council
 - vi. The timeline and next steps.

Structure of the meeting

6. The Chair will move that this item be considered in two parts: an open session, where Members will be able to ask questions on the papers that are in the public domain, namely this cover report and the report to Cabinet attached at **Appendix A, and its appendix 4**; and a closed session, where members of the public will be excluded, where Members can ask questions that pertain to **Confidential Appendices 1-3 of Appendix A and Appendix B**.
7. Members will hear from Councillor Burke (Cabinet Member – Culture, Parks and Events). Neil Hanratty (Director of Economic Development), Kathryn Richards (Head of Culture, Events, Venues and Tourism), Ruth Cayford (Operational Manager –Creative Industries and Culture), Chris Barnett (OM Major Projects), Donna Jones (Assistant Director – County Estates) will also attend the meeting. Members will be able to ask questions of the panel.
8. Members will then be able to decide what comments, observations or recommendations they wish to pass on to the Cabinet for their consideration prior to Cabinet on 13 July 2023.

Background

9. At their meeting on 15 December 2022, Cabinet considered a report titled ‘*St David’s Hall*’¹ that set out that:

¹ Available [here](#)

- i. the funding available for St David's Hall does not meet operating or maintenance costs, the situation is worsening, and the Council cannot afford the scale of capital investment required
- ii. there is a budgeted operating subsidy of £688,700 per annum, which is regularly exceeded, with subsidy levels £1m+
- iii. the 2021 Condition Survey identified several issues and recent updated government guidance in relation to Reinforced Autoclaved Aerated Concrete (RAAC) planks, used in St David's Hall's roof, escalates the need for remedial works.

10. In December 2022, Cabinet agreed in principle to enter into a business sale agreement and lease with AMG and tasked officers to bring a future report to Cabinet, to include the findings of budgetary and staff consultation and an assessment of best value of the AMG offer, to enable Cabinet to decide the best way forward; this is the report attached at **Appendix A**.

Issues identified in the Cabinet Report

11. The report to Cabinet contains the following sections:

- i. **Point 12** – lists the key elements of the business sale agreement and lease
- ii. **Points 14-16** – summarises the budget and staff consultation
- iii. **Point 17** – reaffirms KC advice the proposal is a property transaction
- iv. **Point 18** – summarises the response to the publication of the VEAT notice
- v. **Points 19-20** – summarise best value assessments
- vi. **Points 21-22** – summarise Welsh Language standards
- vii. **Points 23-26** – set out the next steps.

12. The main points contained in the report are:

- i. KC advice is that the proposal is a property transaction, not subject to procurement rules
- ii. The Council is proposing to enter into a business sale agreement and full repairing and insurance 45-year property lease with AMG, which requires works to be undertaken within an appropriate timescale
- iii. AMG to operate the venue as an independent commercial enterprise

- iv. AMG commit to allocate a minimum of 60 days within the peak event calendar and a minimum of 20 further days outside peak dates for classical events, extending to 30 days off peak every other year to accommodate the BBC Cardiff Singer of the World event
- v. AMG commit to maintain the venue's key musical instruments
- vi. AMG will enter into a Memorandum of Understanding with the key classical stakeholders, which reflects a clear intention of the parties to work together collaboratively, albeit that it is not legally enforceable
- vii. AMG commit to employ existing Council employees currently working at St. David's Hall on existing terms via TUPE; this involves 47 individuals as well as some casual workers, and the Council is committed to ensuring staff transferring will not be in detriment.
- viii. The market exercise undertaken in May 2023 coupled with analysis of the wider market and advice from the Council's independent advisors concludes the proposed transaction with AMG represents best value
- ix. AMG has agreed to meet the same standards for Welsh Language as would be expected of the Council.

13. Members are advised that much of the detail for this report is contained in **Confidential Appendices 1-3.**

14. In terms of the next steps, the report sets out the Council needs to:

- i. Undertake full TUPE engagement with all employees prior to entering the lease and business sales agreement with AMG
- ii. Complete the Memorandum of Understanding with classical stakeholders
- iii. Conclude workstreams to determine Tax implications and the structure for the transaction
- iv. Enter into the lease and business sale agreement with AMG, at an appropriate time.

15. **Financial Implications** are at **points 28-42**, and highlight:

- i. The achievable revenue saving is likely to be in the region of £500,000 per annum, as some of the revenue saving will be used to provide the Arts Active Programme

- ii. Any refurbishment costs falling to the Council prior to transfer should be clearly identified and agreed as part of the final contract; these would need to be agreed and form part of future budget setting processes for both capital and revenue budgets. The Council needs to be satisfied that, bearing this in mind, the proposed transfer for nominal consideration remains consistent with the overall best value rationale.
- iii. TUPE and pension fund implications need to be fully set out as part of the completion of the proposed business sale agreement
- iv. The achievability of budget savings 2023/24 and ongoing liabilities for the Council will depend on the timing of staff transfer and legal agreements
- v. It is proposed to establish a workstream to consider and determine the optimum tax structure for the transaction, including VAT.

16. Legal Implications are at **points 43- 58** and highlight:

- i. **Confidential Appendix 1** addresses issues of procurement law and subsidy control
- ii. The legal basis for disposal of Council-owned land
- iii. Cabinet needs to take account of the Council's fiduciary duties to local residents and taxpayers.
- iv. The need for the decision maker to consider its duties with regard to the Equality Act 2010, the Public Sector Equality Duties, the Well- Being of Future Generations (Wales) Act 2015, and the Welsh Language (Wales) Measure 2011 and Welsh Language Standards
- v. Employment Law – the lease and business sale agreement provide for the Council and AMG to treat all employees currently employed by the Council at the venue as transferring under TUPE, with the Council providing certain warranties and indemnities to AMG.

17. Property Implications are at **point 59** stating property implications are described within the report.

18. Points 60-69 set out the **HR implications** for the Council arising from this report, including:

- i. TUPE and the Welsh Government's Code of Practice on Workforce Matters requirements must be met; this includes an Annual Report to Welsh Government on their implementation
- ii. It is proposed that Agency Workers who have been engaged in the same role for a fixed number of hours per week for the last 2 years will be offered contracts of employment and will therefore be covered by TUPE legislation
- iii. AMG would need to determine for themselves the future use of Agency Workers
- iv. Consultation needs to take place with the managers of Cleaning Employees to ascertain if they are in scope to transfer to AMG; if they are, they will need to be engaged in the formal consultation process
- v. It is important to allow sufficient time prior to TUPE transfer to allow for completion of the Admission Agreement re pensions
- vi. Transfer does not trigger an entitlement to redundancy pay unless there is an actual dismissal
- vii. AMG will be required to take over any collective agreements made by or on behalf of the Council that are in force at the point of transfer
- viii. AMG are not bound by post-transfer collectively agreed terms which they have not negotiated
- ix. The Council may offer alternative vacancies to employees who are in the group to transfer but do not wish to transfer, in line with normal recruitment and selection procedures
- x. Should Cabinet agree the recommendations, a formal consultation period will commence with employees who are in scope to transfer to AMG under TUPE; trade union colleague will be invited to attend employee consultation meetings and will be fully briefed throughout the transfer process.

Proposed Recommendations to Cabinet

19. The report to Cabinet contains the following recommendations:

- i. *Delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture, Parks and Events, the Section 151 Officer and the Legal Officer to conclude negotiations with AMG and other relevant stakeholders to:*
 - a. *complete the MOU with stakeholders based on the principles set out in the draft MOU attached at **Confidential Appendix 1**;*

- b. *complete the lease and associated documents as set out at **Confidential Appendix 1**;*
 - c. *complete the business sales agreement with AMG for St David’s Hall based on the principles set out in the draft business sales agreement as set out at **Confidential Appendix 1**;*
- ii. *Authorise the transfer of [all] employees to AMG under the Transfer of Undertaking (Protection of Employment Regulations 2006) (TUPE).*

Previous Scrutiny

20. In December 2022, this Committee undertook pre-decision scrutiny of the report to Cabinet titled ‘*St David’s Hall*’. Members heard from Cllr Burke (Cabinet Member – Culture, Parks and Events), council officers, and Ceri Williams from Cardiff Civic Society. Members also received copies of representations made to the Committee by 22 members of the public, via the Scrutiny Viewpoints mailbox.

21. At the meeting, Members explored the proposals, focusing specifically on funding, process proposed, negotiations to date, consultation, and confidential information. Following this scrutiny, the Chair wrote a public and a confidential letter² to Cllr Burke, conveying the Committee’s comments, observations and recommendations. Members made two requests for information and four recommendations. Cllr Burke responded to this letter³, accepting all the recommendations; the Sandy Brown report was released into the public domain the day after the scrutiny committee meeting.

22. In May 2023, this Committee scrutinised key documents relating to the proposed property transfer of St David’s Hall, including the Voluntary Ex-Ante Transparency Notice (VEAT notice). Members scrutinised the soft marketing exercise, KC advice regarding the proposed transaction qualifying as a property transaction, the VEAT notice, the classical programme and community events, key stakeholder advisory group, liabilities and obligations, ticket prices, the lack of a

² The confidential letter has previously been circulated to Members and the public letter is available [here](#)

³ Available [here](#)

commercial connection between this work and the work on the Indoor Arena, and the lack of contact from the Competition and Markets Authority.

23. Following this scrutiny, the Chair wrote a public and a confidential letter⁴ to Cllr Burke, conveying the Committee's comments, observations and recommendations. In the public letter, Members made one request for information:

- *To provide in writing the current number of days of provision for the classical programme at St. David's Hall.*

24. Cllr Burke responded to this letter⁵, providing details of the protected programme based on a typical year's classical/ community programme.

25. In the confidential letter sent following scrutiny in May 2023, Members made one recommendation; this was partially accepted as detailed in the response received from Councillor Burke, Cabinet Member – Culture, Parks and Events, which has been circulated to Committee Members. Members also made a request for additional information – this is provided at **Confidential Appendix B**.

Way Forward

26. Councillor Burke (Cabinet Member – Culture, Parks and Events) will be invited to make a statement. Neil Hanratty (Director of Economic Development), Kathryn Richards (Head of Culture, Events, Venues and Tourism), Ruth Cayford (Operational Manager – Creative Industries and Culture), Chris Barnett (Operational Manager – Major Projects) and Donna Jones (Assistant Director – County Estates) will attend, and all witnesses will be available to answer Members' questions.

27. All Members are reminded of the need to maintain confidentiality regarding the information provided in **Appendices 1-3 of Appendix A and Appendix B**.

⁴ The confidential letter has previously been circulated to Members and the public letter is available [here](#)

⁵ Available [here](#)

Members will be invited to agree the meeting go into closed session to enable discussion of this information.

Legal Implications

28. The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

29. The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i) Consider the information in this report, its appendices, and the information presented at the meeting
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter, and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

DAVINA FIORE

Director of Governance & Legal Services

05 July 2023