

ST DAVID'S HALL - UPDATE

Appendix 3 of Appendix A is not for publication as it contains exempt information of the description contained in paragraphs 14 and 16 of Part 4 of Schedule 12A of the Local Government Act 1972.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 Update*', which is due to be considered by Cabinet at their meeting on 26 October 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. Appendix 1 – Visual Images of RAAC Planks
 - b. Appendix 2 – Engineers Report
 - c. Confidential Appendix 3 – Legal Advice and Documents
 - d. Appendix 4 – Single Impact Assessment
3. Members should note that **Appendix 3 of Appendix A** is 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 26 October 2023, Cabinet will consider a report that presents the outcome of intrusive surveys of the roof of St. David's Hall and seeks delegated authority to:
 - i. finalise and enter into a Conditional Agreement for Lease with AMG
 - ii. enter into the lease and associated documents upon satisfaction of the conditions within the Conditional Agreement for Lease, and

- iii. complete the business sales agreement with AMG.
5. Cabinet is also recommended to:
- i. Note the continued closure of St. David's Hall and associated consequences,
 - ii. Note the Council's proposed staff engagement strategy.
6. During this scrutiny, Members have the opportunity to explore:
- i. The findings of the survey of St. David's Hall roof
 - ii. The impact of the survey findings, including continued closure
 - iii. The proposed Conditional Agreement for Lease
 - iv. The proposed lease, business sale agreement and associated documents
 - v. The proposed staff engagement strategy
 - vi. The financial, legal, property and HR implications
 - vii. Whether there are any risks to the Council
 - viii. The timeline and next steps.

Structure of the meeting

7. 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 appendices 1, 2 and 4**; and a closed session, where members of the public will be excluded, where Members can ask questions that pertain to **Confidential Appendix 3 of Appendix A**.
8. Members will hear from Councillor Burke (Cabinet Member – Culture, Parks and Events). Neil Hanratty (Director of Economic Development), Chris Barnett (OM Major Projects), Ruth Cayford (Operational Manager –Creative Industries and Culture), Donna Jones (Assistant Director – County Estates), Eirian Jones (OM Strategic Estates), Tracey Thomas (Chief Officer – HR), Scott Couzens (Bevan Britten – the Council's legal advisors on this matter) and Chris Pembridge (WSP – the Council's structural engineers on this matter) will also attend the meeting. Members will be able to ask questions of the panel.

9. 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 26 October 2023.

Background

10. At their meetings in December 2022 and July 2023, Cabinet considered reports regarding St. David's Hall, agreeing to:

- i. delegate authority to conclude negotiations with AMG to complete the lease and business sale agreement for St David's Hall and
- ii. authorise the transfer of employees to AMG under the Transfer of Undertaking (Protection of Employment Regulations 2006) (TUPE).

11. St. David's Hall's roof comprises Reinforced Autoclaved Aerated Concrete (RAAC) planks across the main roof span, covered with a bitumen lining, and woodwool concrete in the vertical mansard, which is clad in lead; images are provided at **Appendix 1**.

12. In August 2023, the Health and Safety Executive issued revised guidance regarding the use of RAAC planks, advising that the use of RAAC planks was at the end of their useful life and they could collapse without warning.

13. In September 2023, the Council temporarily closed St. David's Hall to enable intrusive surveys to identify whether the building risk was RED 'critical' or RED 'high-risk'. The Engineers Report, at **Appendix 2**, outlines the level of risk as RED Critical and that the RAAC planks need to be replaced or a remedial solution needs to be implemented prior to re-opening the building.

Issues identified in the Cabinet Report

14. The report to Cabinet contains the following sections:

- i. **Points 10-17** – set out the key issues relating to the roof
- ii. **Points 18- 24** – set out the proposed agreement with AMG
- iii. **Points 25- 31** – set out the proposed staff engagement strategy.

15. The main points contained in the report are:

Roof

- i. The entire roof cladding needs to be replaced within the next 1-3 years
- ii. It is better to have a comprehensive full replacement, rather than a temporary fix followed by a full replacement, for three reasons: affordability, minimising the overall closure period, and insurance risk and liability.

AMG

- iii. AMG has confirmed they are committed to investing in St. David's Hall and wish to proceed with the transaction
- iv. A conditional lease will provide AMG assurance to spend monies required to undertake detailed design works and submit applications for planning permission and listed building consent
- v. The lease would complete 30 days after planning permission and listed building consent are achieved, provided AMG are still willing to go ahead with the lease; AMG anticipate the lease becoming unconditional in less than 12 months
- vi. A 12-month period, subject to extensions to a maximum of a further 24 months, is proposed for condition satisfaction; if conditions are not satisfied within this timeframe, either party may terminate the agreement. This means there is no guarantee at this time that the venue will transfer to AMG and re-open as proposed
- vii. AMG has suggested establishing a working group with representatives from AMG and the Council to manage requirements and ensure a positive and swift outcome that meets conservation, planning and listed building requirements, acoustic requirements and safety requirements
- viii. AMG has committed to undertake wider refurbishment works whilst the building is closed, meaning further closures are not anticipated.

Staff Engagement

- ix. It is likely St. David's Hall will be closed for circa 18 months
- x. The Council cannot justify retaining staff in ungainful employment for this length of time and needs to formally consult with staff and their representatives regarding future options

- xi. The Council will offer all permanent and casual staff with acquired rights, including agency staff with over 2 years' service, the opportunity for voluntary severance and redeployment
- xii. Agency staff with under 2 years' service will be released from their assignments
- xiii. AMG has offered to make existing staff aware of vacancies within their wider business.
- xiv. Voluntary Severance costs to the Council will be worked through as part of the staff consultation process.

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

- i. Consult staff and their representatives regarding potential redeployment/ voluntary redundancy/ redundancy measures
- ii. Enter into a Conditional Agreement for Lease with AMG and establish a working group
- iii. Confirm longer-term closure, including working with AMG to book new events and re-programme current bookings
- iv. Conclude the work to determine tax implications and appropriate structure for the transaction.
- v. Enter into the Lease and Business Sale Agreement, once conditions are satisfied and if the proposed transaction remains viable.

17. **Financial Implications** are at **points 39- 49**, and highlight:

- i. The replacement of the roof and other issues relating to the fabric of the building far exceeds the available capital budgets within the Council's programme
- ii. The proposed lease requires no Council capital investment, future buildings liability and no committed annual revenue payments or subsidy
- iii. The offer provides for the continuation of the classical programme requiring no ongoing contribution from the Council
- iv. Minimal annual costs to the Council re St. David's Hall consist of permanent employees staffing costs of circa £1.5m per annum and premises costs of circa £600,000 per annum; the Council will be liable for these costs until the unconditional lease becomes active.

- v. The Council will explore whether it is able to reduce premises costs, by reducing utility costs and rates
- vi. The Council will consult staff and their representatives on potential redeployment / voluntary redundancy / redundancy measures to best mitigate the costs identified above, considered on a case-by-case basis
- vii. There is a risk that the Council may be open to potential claims for compensation from promoters for performances being rescheduled or postponed
- viii. The Council needs to be satisfied that best value applies, considering the latest information on the roof risks, TUPE, employee and Pension Fund implications, as well as business sale agreement obligations
- ix. Further consideration will need to be given to the legal, procurement, VAT, and tax implications of the proposals as the transfer documentation is finalised in order to ensure that the structure of any final contract sufficiently protects the Council's interests.

18. Legal Implications are at **points 50 - 63** and highlight:

- i. Legal advice in relation to proposed transaction is at **Confidential Appendix 3**
- ii. The legal basis for disposal of Council-owned land, including best consideration duty and advice received on this
- iii. The Council previously obtained KC advice regarding subsidy control
- iv. Cabinet will need to remain satisfied, with reference to the advice received from the independent surveyor, from King's Counsel (and subject to satisfactory resolution of the points to be addressed in King's Counsel's advice), and in light of the closure of the venue and need for urgent repairs and replacement of the roof to allow the venue to operate (and the increased upfront cost that AMG will need to bear in relation to such repairs), that the disposal by way of a 45 year lease to AMG continues to meet the best consideration duty.
- v. Cabinet needs to take account of the Council's fiduciary duties to local residents and taxpayers
- vi. 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

- vii. Employment Law – the closure of St. David's Hall, as opposed to a transfer of the staff under TUPE, means that the Council may need to make the staff working at the Hall redundant unless it is possible to redeploy them elsewhere within the Council or otherwise avoid redundancies. Prior to any such decisions being made, the Council should consult with the appropriate representatives of the affected staff under s188 Trade Union Labour Relations (Consolidation) Act 1992 and follow a fair process in relation to any redundancy proposals, including consulting with affected staff individually, to try to mitigate the need for any redundancies.

19. Property Implications are at **points 64-70** including:

- i. Without prejudice to its capacity as planning authority, the Council is obligated to provide reasonable co-operation to AMG to satisfy the conditions to the agreement for lease, in its capacity as landowner
- ii. From exchange of the agreement, the parties will be bound to enter into the lease and business sale agreement following satisfaction of the conditions
- iii. Without an agreement for lease, either party could withdraw from the transaction with no notice or reason. In addition, AMG may be unlikely to proceed without assurance that the additional works required are viable.

20. Points 71-80 set out the **HR implications** for the Council arising from this report, including:

- i. In July 2023, Cabinet authorised the transfer of employees to AMG under the Transfer of Undertaking (Protection of Employment) Regulations 2006, as amended (TUPE)
- ii. Since closure of St. David's Hall, some employees are undertaking their roles through hybrid working, some are working at alternative venues such as County Hall, and casual workers have been offered alternative work opportunities at various venues
- iii. The need to replace the roof means the Council is not able to inform employees when the building is likely to re-open and become operational as a venue – this has significant implications for employees

- iv. It is unlikely TUPE would apply given the number of uncertainties and variables and length of the potential closure, but this would be fact dependent on the circumstances and could only be tested through legal routes
- v. Given the impact of the uncertainty of the future opening and operation of St. David's Hall on employees and the ongoing salary liabilities to the Council whilst the venue is closed, the Council should undertake a period of consultation with employees and trade unions in respect of potential redundancy risks
- vi. The Council will make every effort to mitigate the need for any redundancies and will in the first instance seek expressions of interest from employees in Voluntary Severance and will also seek to redeploy employees to alternative roles within the Council via the Corporate Redeployment Scheme
- vii. Employees who are seeking redeployment will remain on the redeployment register for a period of 12 weeks whilst suitable alternative employment opportunities are sought. At the end of the 12-week period, should the Council not be able to secure alternative employment, employees will be made redundant and would receive redundancy payments based on the Council's enhanced redundancy payments scheme
- viii. All expressions of interest in Voluntary Severance would need to be considered on a case-by-case basis considering any pension fund implications
- ix. It is essential that employees are fully briefed, consulted and supported throughout the formal consultation process
- x. The trade unions, employees and agency workers have been briefed on the recommendations set out in this report. Should Cabinet agree to the recommendations, a formal consultation period will commence under s188 Trade Union Labour Relations (Consolidation) Act 1992.

Proposed Recommendations to Cabinet

21. The report to Cabinet contains the following recommendations:

1. *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. *Finalise and enter into a Conditional Agreement for Lease with AMG on the basis of the principles set out in the draft Conditional Agreement for Lease set out at **Confidential Appendix 3**;*
 - b. *Enter into the lease and associated documents as set out at **Confidential Appendix 3** upon satisfaction of the conditions within the Conditional Agreement for Lease;*
 - 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 attached at **Confidential Appendix 3** upon satisfaction of the conditions within the Conditional Agreement for Lease;*
2. *Note the continued closure of St David's Hall and the associated consequences set out in this report until AMG satisfy the conditions within the Conditional Agreement to Lease.*
 3. *In light of the above, it is unlikely that all employees will transfer to AMG under the Transfer of Undertaking (Protection of Employment Regulations 2006) as envisaged in the July 2023 Cabinet report. As a result, to note the Council's proposed staff engagement strategy to manage the closure of St David's Hall as set out in this report.*

Previous Scrutiny

22. 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.

23. 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 letter¹ 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 letter², accepting all the recommendations; the Sandy Brown report was released into the public domain the day after the scrutiny committee meeting.

¹ The confidential letter has previously been circulated to Members and the public letter is available [here](#)

² Available [here](#)

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

25. Following this scrutiny, the Chair wrote a public and a confidential letter³ to Cllr Burke, conveying the Committee's comments, observations and recommendations. In the public letter, Members made one request for information. Cllr Burke responded to this letter⁴, providing details of the protected programme based on a typical year's classical/ community programme. 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, which was provided.

26. In July 2023, this Committee scrutinised key documents relating to the proposed business sale agreement, the full repairing and insuring lease, the draft Memorandum of Understanding, and the Repairs Schedule, including KC advice on the proposed transaction.

27. Following scrutiny in July 2023, the Chair wrote a public and a confidential letter⁵ to Cllr Burke, conveying the Committee's comments, observations and recommendations. In the confidential letter, Members made one recommendation; this was accepted as detailed in the response received from Councillor Burke,

³ The confidential letter has previously been circulated to Members and the public letter is available [here](#)

⁴ Available [here](#)

⁵ The confidential letter has previously been circulated to Members and the public letter is available [here](#)

Cabinet Member – Culture, Parks and Events, which has been circulated to Committee Members.

Way Forward

28. Councillor Burke (Cabinet Member – Culture, Parks and Events) will be invited to make a statement. Neil Hanratty (Director of Economic Development), Chris Barnett (Operational Manager – Major Projects), Ruth Cayford (Operational Manager –Creative Industries and Culture), Donna Jones (Assistant Director – County Estates) and Eirian Jones (Operational Manager – Strategic Estates) will attend, along with Tracey Thomas (Chief Officer - HR) and Scott Couzens (Bevan Britten – the Council’s legal advisors on this matter). All witnesses will be available to answer Members’ questions.

29. All Members are reminded of the need to maintain confidentiality regarding the information provided in **Appendix 3 of Appendix A**. Members will be invited to agree the meeting go into closed session to enable discussion of this information.

Legal Implications

30. 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

31. 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

18 October 2023