

## **CABINET MEETING: 26 OCTOBER 2023**

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### **ST DAVID'S HALL UPDATE**

### **CULTURE, PARKS & EVENTS (COUNCILLOR JEN BURKE)**

### **AGENDA ITEM: 1**

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***Appendix 3 of this report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 of Schedule 12A of the Local Government Act 1972. In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.***

#### **Reason for this Report**

1. To provide an update on the proposed lease of St David's Hall to AMG following the recent enforced closure of the building due to the roof structure containing RAAC (Reinforced Autoclaved Aerated Concrete) planks.
2. To seek approval to finalise and enter into a Conditional Agreement for Lease with AMG which, subject to the conditions being satisfied and viable, will allow the Council to transfer the business of St David's Hall via a business sale agreement and enter a full repairing and insuring 45-year lease with AMG (as previously agreed by Cabinet in July 2023) to protect the venue and to develop and maintain the music and cultural/community offer including the classical programme.
3. To present the outcome of the intrusive surveys of the roof of St David's Hall and the subsequent impact on the decisions taken for the future of St David's Hall.
4. To outline the proposed staff engagement strategy to manage the closure of St David's Hall until such time AMG has satisfied the conditions within the Conditional Agreement to Lease and concluded the required works.

#### **Background**

5. In July 2023, Cabinet delegated authority to conclude negotiations with AMG to complete the lease and business sales agreement for St David's Hall and authorised the transfer of employees to AMG under the Transfer of Undertaking (Protection of Employment Regulations 2006) (TUPE).
6. In August 2023, revised guidance from the Health and Safety Executive was issued following the collapse of a school roof in Kent which contained RAAC planks in the roof structure (previously regarded as "low risk"). The HSE advised that the use of RAAC planks was at the end of their useful life and that they could collapse without warning.
7. The St David's Hall roof comprises two main materials: 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. (See images at **Appendix 1**).
8. In September 2023, following advice from the Council's appointed specialist engineers, the Council took the decision to temporarily close St David's Hall to allow intrusive surveys of the RAAC planks and structural steel to be undertaken. This was to better understand and determine the condition of the planks and whether they posed safety concerns.
9. Since closure in September 2023 and based on ongoing monitoring undertaken in relation to the RAAC planks the Council's appointed engineers have categorised the building as a RED risk (the highest category of risk rating available). Considering this, the intrusive surveys commissioned were to identify whether the building risk was RED "critical" or RED "high-risk". The engineers report attached at **Appendix 2** outlines the level of risk RED Critical Risk and that the RAAC planks need to be replaced or a remedial solution needs to be implemented prior to re-opening of the building.

## **Issues**

10. Given the 30-year life span of RAAC and the additional presence of the woodwool concrete in the vertical mansard the Council has been advised that the entire roof cladding will need to be replaced within the next 1-3 years.
11. The replacement of the St David's Hall roof will be a complicated and costly exercise for the following reasons:
  - the city centre location in the Hayes,
  - the height of the roof/ceiling,
  - the building has recently been listed as having special architectural and historical interest.
  - the requirement to preserve the acoustic quality of the venue,
  - the likely requirements for planning permission

All the above will inevitably create a complex and time-consuming process to find a viable solution. AMG has also estimated that the cost of full replacement is likely to be 4-5 times more expensive than their original plan to provide a remedial solution in the early part of the lease.

12. The Council's priority is to get St David's Hall safely re-opened as quickly as possible. A full replacement of the roof will now be required much earlier in the programme of maintenance and refurbishment than was previously expected. Any short-term remedial solution would need to be very quickly followed by a more comprehensive full replacement. Therefore, whilst a temporary fix may get the building re-opened more quickly, it is likely that the venue would need to close again within the next 1-3 years for a full replacement. The substantial cost of the full replacement makes a short-term temporary fix unrealistic on affordability grounds. Furthermore, whilst a temporary fix would get the building initially re-opened more quickly, the cumulative length of closure for the short-term solution followed by a full replacement would mean a longer period of closure during the next 1-3 years than undertaking a full replacement from the outset.
13. Further to the above, any short-term remedial solution would also need to be approved by insurers as the risk of failure would remain until the roof is replaced, as the RAAC planks are at the end of their useful life. AMG has confirmed to the Council that they would not wish to reopen the venue until all the RAAC planks have been removed and a full replacement roof has been delivered, and therefore if the venue was to open with a short-term remedial solution, the potential risk of failure would ultimately need to remain with the Council.
14. As the building is going to need to be closed for a substantial period of time to undertake works there is a need to agree a way forward for the existing Council staff employed at the venue.
15. The length of time a short-term remedial solution will delay the need for a full roof replacement is also unknown at this time and will only be determined once an engineered scheme has been designed and approved.
16. AMG has confirmed to the Council that they would not wish to reopen the venue until a full replacement roof has been delivered, and therefore if the venue was to open with a short-term remedial solution, the risk of failure would ultimately need to be accepted by the Council and its insurers.
17. As the building is going to need to be closed for a substantial period of time to undertake works there is a need to agree a way forward for the existing Council staff employed at the venue.

### **Proposed Agreement with AMG**

18. Despite the solidification of the RAAC plank risk, AMG has confirmed that they remain committed to investing in St David's Hall and would still wish to proceed with the proposed transaction previously agreed by Cabinet in the July 2023.
19. However, in light of the recent developments, they would initially require the business sale agreement and associated lease to be conditional to enable them to work towards identifying a viable solution and to secure planning

permission and listed building consent for the required works to the roof and other parts of the building.

20. Entering into a Conditional Agreement for Lease as an initial step will provide AMG with the assurance to spend the required sums to undertake the detailed design works and to submit applications for listed building consent and planning if required. Once these are achieved, provided AMG are still willing to go ahead the lease would complete 30 days later, in advance of AMG undertaking works. The costs of undertaking the design works will be at AMG's risk.
21. If the conditions are not satisfied by 12 months from entering the conditional lease, subject to extensions of up to a maximum of a further 24 months pending final determination of a submitted or appealed planning application, either party may terminate the agreement. On this basis, there is no guarantee at this time that the venue will transfer to AMG and re-open as proposed.
22. It is therefore proposed that the Council enter into a Conditional Agreement for Lease capturing the conditions set out above. The draft Conditional Agreement for Lease is appended at **Confidential Appendix 3**.
23. Even though the timelines outline a period of potentially up to 36-months to satisfy the abovementioned conditions AMG is committed to delivering the solution as quickly as possible and anticipate the lease becoming unconditional in less than 12 months. The key consideration will be how they deliver a viable solution that meets conservation, planning and listed building requirements, acoustic and safety requirements. AMG has suggested a working group will be required made-up of representatives from both AMG and the Council to manage the requirements to ensure a positive and swift outcome. AMG's aspiration is to re-open the building in circa 18 months from entering the Conditional Agreement to Lease and they are targeting a re-opening well in advance of the next BBC Cardiff Singer of the World competition in June 2025.
24. AMG has also committed to undertake the wider refurbishment works that they proposed within their original maintenance and refurbishment programme, upfront, whilst the building is closed to deal with the roof, and therefore the building will re-open without the requirement for any further anticipated closures.

### **Staff Engagement**

25. The extended closure of St David's Hall will have major implications for the staff currently employed at the venue. Given that the building is likely to be closed for circa 18 months, the Council will not be able to justify retaining staff in ungainful employment for that period of time. The estimated cost of retaining staff is set out in the financial implications of this report.
26. The Council will therefore need to formally consult with staff and their representatives regarding future options with immediate effect.

27. All permanent staff, and temporary and casual staff with acquired rights, will be offered the opportunity for voluntary severance.
28. The staff identified above will also be offered the opportunity to access the redeployment register to be considered for redeployment into suitable alternative roles within the Council subject to the Council's redeployment process. Staff that prefer to be redeployed but are unsuccessful in securing a new position through the redeployment process will still have the benefit of redundancy on the same terms as voluntary severance at the end of the redeployment process.
29. Agency staff with over 2 years of service will be included in the process based on their service. Agency staff with under 2 years of service will be released from their assignments.
30. AMG has also offered to engage with all existing staff to make them aware of vacancies that can be applied for within their wider business.
31. The costs to the Council associated with voluntary severance will be worked through as part of the staff consultation process.

### **Next Steps**

32. The Council is required to consult with all employees currently employed at St David's Hall and their representatives in relation to potential redeployment/voluntary redundancy/redundancy measures.
33. It is proposed that the Council enters into a Conditional Agreement for Lease with AMG for St David's Hall by the end of October 2023.
34. The Council will need to confirm a longer-term closure of the venue whilst the viable solution for the roof is designed, and necessary approvals are secured and works undertaken. This will also include working with AMG to book new events and to re-programme current bookings ready for the re-opening of St David's Hall.
35. A working group will need to be established between the Council and AMG to manage the overall process and facilitate the delivery of a solution for the re-opening of St David's Hall.
36. Upon AMG satisfying the conditions within the Conditional Agreement for Lease and the proposed transaction remaining viable, the Council will enter into the lease and business sale agreement with AMG to transfer the ongoing operation of St David's Hall to AMG.
37. Work-streams to determine the tax implications and appropriate structure of the transaction will need to be concluded.

### **Reasons for Recommendation**

38. To establish a sustainable long-term future for St David's Hall, the National Concert Hall of Wales and to protect the delivery of the classical music/community programme.

### **Financial Implications**

39. The report seeks approval for the Council to enter into a conditional agreement for lease subject to the conditions within it being satisfied. This approval would allow the Council to transfer St Davids Hall via a business sale agreement and a full repairing and insuring 45-year property lease with AMG as tenant for the operation of the building as an independent commercial enterprise. Entry into the business sale agreement and associated lease would be conditional on AMG receiving viable planning permission and listed building consent for the required works to the roof and other works to the stalls area. **Confidential Appendix 3** sets out the draft detailed terms for the lease and an associated business sale agreement.
40. The report also sets out the outcome of the intrusive surveys of the roof of St David's Hall, which has now confirmed the entire roof will need to be replaced to ensure a long-term solution is provided for the building to allow St David's Hall to operate as a venue. As reported previously, 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.
41. Subject to the conditions being met, the lease as it is currently drafted would require no Council capital investment, no future buildings liability, and no committed annual revenue payments or subsidy to the new tenant. The offer also provides for the continuation of the classical programme requiring no on-going contribution from the Council.
42. It was previously reported that all staff associated with St David's Hall would transfer to AMG under the TUPE regulations. However, the closure of St David's Hall whilst a solution for the roof is developed, agreed, and delivered will have implications for the staff currently employed at St David's Hall.
43. The timelines in the report outline the potential for a significant period before the unconditional lease becomes active. During this period the Council will continue to be liable for the staffing and premises costs of the building. The current staffing cost for permanent employees (excluding agency staff) at St David's Hall is circa £1.5m per annum and the premises costs is circa £600k. If the hall is closed for an extended period, and no income from shows or hires is generated as this report suggests is likely, this would be the minimum annual cost to the Council until either the building is re-opened, and normal operations can resume or the transfer to AMG is concluded.
44. Promoters have indicated a willingness to work with the Council and AMG to reschedule and postpone performances to a later date, in order to facilitate all required works to be completed. There remains a risk that this may not be the ongoing case should the building remain closed for an extended period leaving the Council open to potential claims for compensation.

45. There may be offsetting premises savings that could be realised for reduced utilities and rates during this period. These variables will need to be worked through over the coming months to fully understand the financial impact of the proposals.
46. Given the likely extended timescales involved, the Council will now consult with all employees currently employed at St David's Hall and the appropriate representatives of such employees in relation to potential redeployment / voluntary redundancy / redundancy measures to best mitigate the costs identified above.
47. Redundancy and all expressions of interest will need to be considered on a case-by-case basis to ensure that there is an affordable and rational business case for release including any ongoing Pension Fund implications. Also, consideration will need to be given to any requirement to retain staff on a short-term basis to support and finalise the proposed transfer arrangements. The financial impact of these proposals would need to be worked through in more detail once the staff consultation is concluded and further information is available.
48. Considering the risks previously identified with the roof have now solidified / worsened, the Council will still need to be satisfied that any changes to the TUPE / Employee / Pension Fund implications set out in the report, or any obligations regarding the value of any assets transferred under the business sale agreement, remains consistent with the overall best value rationale as demonstrated in previous reports.
49. 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.

## **Legal Implications**

50. Legal advice in relation to the proposed transaction is set out at **Confidential Appendix 3**.
51. Section 123 of the Local Government Act 1972 provides the Council with power to dispose of land "in any manner they wish", provided that best consideration is obtained for disposal of any interest for a term exceeding 7 years. Disposal of an interest in land for a term exceeding 7 years for a consideration less than the best that can reasonably be obtained requires the consent of the Welsh Parliament, unless the disposal falls within the NAFWC 41/2003 Local Government Act 1972: General Disposal Consent (Wales) Order 2003.
52. The Council has obtained professional advice from an independent surveyor on the best consideration duty **Confidential Appendix 3**. In conclusion, the independent surveyor stated that:

“AMG’s offer when balanced against the liabilities and costs currently facing the Council, clearly demonstrates best consideration for the Council...”

53. The surveyor’s advice was received prior to the Council receiving advice from its consulting engineers that the venue needed to be shut due to the high-level risk associated with the roof. The requirement to repair the roof was already identified within the surveyor’s report and accounted for by AMG in their offer. The effect of the crystallisation of risk brings forward the need to repair and replace. Costs of expediting the repairs are likely to be higher than costs associated with repairs to be undertaken over a period of time, and this change in circumstance is therefore unlikely to reduce the costs for the repair and replacement programme used in the assessment.
54. The Council has also obtained two opinions from King’s Counsel addressing issues of procurement law, the best consideration duty under section 123 LGA 1972, and on subsidy control set out at **Confidential Appendix 3**. This which was first presented to Cabinet at the meeting of 13 July 2023. Counsel’s advice contains various recommendations as to points to be addressed before the transaction is finalised. **Confidential Appendix 3** sets out the points to be addressed and the steps taken by the Council.
55. 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.
56. In coming to its decision, Cabinet needs to ensure that it acts in accordance with its fiduciary duty to local residents and taxpayers.
57. Cabinet must also have due regard to the Council’s public sector equality duty pursuant to the Equality Act 2010 (including specific Welsh public sector duties). An Equalities Impact Assessment (EIA) has been undertaken and was originally provided to Cabinet at its meeting of 13 July 2023, and is attached as **Appendix 4**.
58. The Well-being of Future Generations (Wales) Act 2015 ("the Act") places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales — a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
59. In discharging its duties under the Act, the Council has set, and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff’s Corporate Plan 2023-26.



60. The well-being duty also requires the Council to act in accordance with the 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term;
  - Focus on prevention by understanding the root causes of problems;
  - Deliver an integrated approach to achieving the 7 national well-being goals;
  - Work in collaboration with others to find shared sustainable solutions; and
  - Involve people from all sections of the community in the decisions which affect them.
61. The Cabinet must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible here:
- <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>
62. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language.

### *Employment law*

63. The closure of St David's Hall whilst a solution for the roof is developed, agreed, and delivered and the fact that, at this point in time, the Council cannot guarantee that a viable solution can be found that will allow the building to re-open, has implications under employment law. The closure of the 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.

### **Property Implications**

64. The Council is under an obligation - solely in its capacity as landowner and without prejudice to its capacity as planning authority – to provide reasonable co-operation to AMG to satisfy the conditions to the agreement for lease.
65. From exchange of the agreement, the parties will be bound to enter into the lease and business sale agreement following satisfaction of the conditions.

66. Save for the above, there are no substantial obligations on the part of the Council before completion of the Lease.
67. If the conditions are not satisfied within 12 months (subject to extensions to a maximum of 36 months from the agreement if a submitted planning application or appeal is pending final determination), either party may terminate the agreement and the transaction will not proceed.
68. Exchanging an agreement for lease will ensure that the parties are legally bound to complete the lease and business sale agreement subject to the conditions above being satisfied.
69. Without an agreement for lease, either party could withdraw from the transaction with no notice or reason.
70. Without an agreement for lease, AMG may be unlikely to proceed without assurance that the additional works required are viable.

## **HR Implications**

71. In July 2023, as outlined in paragraph 5 of this report, Cabinet agreed that negotiations could conclude with the AMG group to complete the lease and business sales agreement and authorised the transfer of employees from Cardiff Council to the AMG group under the Transfer of Undertaking (Protection of Employment Regulations 2006, as amended. (TUPE).
72. The Council made the decision to close St. David's Hall during September 2023 following receipt of advice in relation to RAAC being present at the venue which represented a critical health and safety risk.
73. Following the closure of St. David's Hall, some employees have continued to undertake their roles through hybrid working, whilst other employees have been working at alternative venues such as County Hall thus ensuring business continuity to members of the public and external companies. Casual workers have been offered alternative work opportunities at various venues which has reduced the need to engage agency workers.
74. The outcome of the surveys confirm that the roof of St. David's Hall will need to be replaced. This would have significant implications for employees as the Council is not able to inform employees when the building would likely re-open and become operational as a venue.
75. As outlined in the financial implications, the timelines indicate the potential for a significant period before the unconditional lease becomes effective and during this time the Council will continue to be liable for employee salary costs. Furthermore, as the venue will remain closed with no services taking place, there will be a need for employees to be gainfully employed potentially carrying out alternative duties.

76. The employment law aspects are covered at paragraph 63 of this report. As St. David's Hall will remain closed for an unspecified period of time, whilst it is possible for TUPE to apply in certain circumstances where there is a temporary cessation of activities of the undertaking; given the number of uncertainties and variables and the length of the potential closure with no business activity undertaken, it would be unlikely that TUPE would apply but this would be fact dependent on the circumstances and could only be tested through legal routes.
77. 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 as outlined in paragraph 63 of this report. 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. 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.
78. As outlined in paragraph 47 of the financial implications contained in this report, all expressions of interest in Voluntary Severance would need to be considered on a case-by-case basis considering any pension fund implications.
79. It is essential that employees are fully briefed, consulted and supported throughout the formal consultation process.
80. 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.

## **RECOMMENDATION**

Cabinet is recommended to:

- 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.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Neil Hanratty</b> <b>Director of Economic Development</b>
	<b>20 October 2023</b>

*The following appendices are attached:*

- Appendix 1** - Visual Images of RAAC Planks
- Appendix 2** - Engineers Report
- Confidential Appendix 3** - Legal Advice & Documents
- Appendix 4** - Single Impact Assessment