



FULL COUNCIL REPORT

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| Date Written | 13 th March 2024 |
| Report Author | Geraint Morgan |
| Service Area | Legal Services |
| Exempt/Non Exempt | Non Exempt |
| Committee Date | 20 th March 2024 |

Aberfan Community Centre

1.0 SUMMARY OF THE REPORT

- 1.1 This report sets out the situation concerning the Aberfan Community Centre ('the Centre').
- 1.2 It sets out the legal complexities concerning the Charity, the running of services from the Centre following termination of the contract and the legal technicalities that will arise as a consequence of Councillors becoming trustees for the Centre.
- 1.3 It sets out the matters which councillors need to consider before making a decision as to whether or not they wish to become trustees.

2.0 RECOMMENDATIONS that

- 2.1 The continuation of discussions with Wellbeing Merthyr to ensure that a leisure and library service are provided from Aberfan after the termination of the Management Agreement be approved.
- 2.2 The undertaking of a full due diligence exercise in relation to the acquisition of the trusteeship of the Centre and surrounding land be approved.
- 2.3 The presentation of a further report to Council following the completion of the due diligence exercise and following receipt of Charity Commission advice be approved.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 The Aberfan Disaster Fund was established in 1967 following the disaster on 21st October 1966.

- 3.2 The two key aims of the Fund were (1) for the relief of all persons who had suffered as a result of the said disaster and were thereby in need; and (2) subject to the aforesaid for any charitable purpose for the benefit of persons who were inhabitants of Aberfan and its immediate neighbourhood on 21st October 1966 for any charitable purpose for the benefit of children who now or hereafter may become resident in the area.
- 3.3 In 1987 land that was previously the site of houses at Moy Road, Pant Glas Road, Hartwell Villas, Briar House and the Bakery and Stables Pant Glas Road was conveyed to the Aberfan Disaster Fund Management Committee. It is this land that part of the Centre sits on. Some of the land that was conveyed in 1987 now forms part of the play area to the north of the Garden of Remembrance. The Garden of Remembrance sits on the site of the former Pantglas School.
- 3.4 The remainder of the land upon which the building sits together with the car park that serves the Centre was registered with His Majesties Land Registry in 2015 following statutory declarations being made stating that the land had been used by the Council as trustee for the Charity.
- 3.5 In 1988 The Charity Commission determined that the Aberfan Disaster Fund be separated into two distinct charities: firstly The Memorial Charity (now known as The Aberfan Memorial Charity) and secondly The Centre. The Memorial Charity became vested in the Official Custodian for Charities and The Centre became vested in Merthyr Tydfil Borough Council.
- 3.6 The Trustee for the Garden of Remembrance is the Aberfan Memorial Charity.
- 3.7 The Council as Trustee was responsible for the administration and upkeep of the Centre between 1988 and 2015. On 1st April 2015 the Merthyr Tydfil Leisure Trust (Wellbeing Merthyr) was established to run the leisure and library services on behalf of the Council.
- 3.8 Charity Commission approval was sought in 2015 to transfer the trusteeship of the Centre from the Council to the Merthyr Tydfil Leisure Trust. Charity Commission approval was granted on 7th October 2015 and since that date Merthyr Tydfil Leisure Trust has been the trustee of the Centre.
- 3.9 On 19th April 2016 title deeds to the Centre, the adjoining car park, the play area to the north of The Garden of Remembrance and a small area of land (open grassed land) to the north-east of The Garden of Remembrance were transferred from the Merthyr Tydfil County Borough as trustees of The Aberfan Disaster Fund to Merthyr Tydfil Leisure Trust as trustees for the Aberfan Disaster Fund.
- 3.10 Since 19th April 2016 the ownership of the Centre has vested in the Merthyr Tydfil Leisure Trust.

- 3.11 Since the establishment of the Merthyr Tydfil Leisure Trust on 1st April 2015 the Council has been in a contractual relationship with the Merthyr Tydfil Leisure Trust for the Trust to provide a leisure provision from both the Aberfan Community Centre and the Merthyr Tydfil Leisure Centre. The Council issued a termination notice in respect of the contract as it no longer required the Merthyr Tydfil Leisure Trust to manage the leisure provision from either Aberfan or Merthyr Tydfil.
- 3.12 The Council still desires that a leisure provision and a library provision be administered from the Centre. Despite numerous requests by the Council to the trustees in relation to the provision of a leisure and library service from Aberfan no response had been received.
- 3.13 Members should be aware that Wellbeing Merthyr is heavily reliant on the income that it receives from the Council under the Management Agreement. Following termination of this contract Wellbeing Merthyr will not be in receipt of this income.
- 3.14 Members have expressed a wish at previous Council meetings that trusteeship of the Centre should revert to the Council.
- 3.15 Charity Commission advice will be sought as to whether this is an option that is open to the Council. Should the advice from the Charity Commission be favourable and the councillors are able to become the trustees, an in principal decision is required that this is the wish of Council.
- 3.16 Councillors are advised of the following, the Centre and land would not be an asset of the County Borough, it would be an asset that is held by the trustees for the benefit of the Charity. Councillors are further informed that prior to them making any final decision about trusteeship that a full due diligence exercise in relation to the Centre be undertaken. This due diligence exercise would, amongst other matters, require a condition survey to be undertaken in relation to the building, accounts to be presented demonstrating the economic viability and also whether the Aberfan Trust has any liabilities and whether there are any leases or licences.
- 3.17 Should the asset be transferred to the Councillors then councillors need to be aware that the only finance available to the Trust is the income that the Centre generates. This income will need to cover, amongst other matters, the insurance and upkeep of the building and surrounding car park and play area and any national non-domestic rates. If there is insufficient money within the accounts to run the Centre, it is not open to the trustees to use Council funds to run the Centre. Councillors are informed that it would be possible for the councillors as trustees to generate income through the letting of the building.
- 3.18 Councillors are advised that upon becoming trustees they need to be aware of Charity Commission Guidance. The Guidance can be found on The Charity Commission Website and covers a number of matters which include liability of trustees, management of trust assets, preparation and keeping of accounts. Councillors should familiarise themselves with this Guidance.

- 3.19 Councillors are further advised that The Charity Commission issued the Charity Governance Code in 2017. The Charity Governance Code is a standard of good governance practice for charities. It explains the minimum standards that charities should meet to manage and control their activities with integrity, effectiveness, accountability and transparency. Whilst not a legal or a regulatory requirement it is nevertheless a voluntary and aspirational tool that charities can use to improve their governance.
- 3.20 Councillors should consider how they intend to follow the Charity Governance Code and what measures they would intend to put in place to ensure good governance of the Charity. Councillors will also need to consider who they will employ to undertake their accounts and whether they would wish to employ an agent to undertake routine inspections in relation to maintenance and repair. Consideration by the trustees will also need to be given as to how the Charity would pay for these services.
- 3.21 As mentioned previously within the report the trustees can generate income to pay for these services by way of letting the building.
- 3.22 At present only an in principal decision is required as to whether the councillors would be willing to take on trusteeship. No firm decision can be made until the necessary due diligence exercise in respect of the Aberfan Trust has been undertaken and scrutinised and the advice from the Charity Commission has been received.
- 3.23 It is likely that this due diligence exercise and the advice necessary from The Charity Commission could take some months. In the interim it is proposed that the Council enter into discussions with the current trustees to enable an agreement to be put in place to ensure that services can still be provided from the Centre whilst the legal technicalities and the issue of trusteeship is resolved.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There is a financial implication in relation to the providing of a service from Aberfan. The actual financial implication is unknown as it requires discussion with the current trustees. Wellbeing Merthyr will need to charge the Council a proper market rent to enable the Council to use the building to run the services. The running of the service will be managed by Halo Leisure Services Limited and a price to run the service will be negotiated with Halo.
- 4.2 There will be a financial implication in relation to the running of the due diligence exercise which will require officer time.

5.0 INTEGRATED IMPACT ASSESSMENT

5.1

| | Positive Impacts | Negative Impacts | Neutral |
|---|--|----------------------|--------------|
| 1. Merthyr Tydfil Well-being Objectives | 4 of 4 | 0 of 4 | 0 of 4 |
| 2. Sustainable Development Principles | 5 of 5 | 0 of 5 | 0 of 5 |
| 3. Protected Characteristics (including Welsh Language) | 10 of 10 | 0 of 10 | 0 of 10 |
| 4. Socio-economic Disadvantage | 6 of 6 | 0 of 6 | 0 of 6 |
| 5. Decarbonisation | 2 of 6 | 0 of 6 | 4 of 6 |
| 6. Biodiversity and the resilience of Ecosystems | Maintained | Enhanced | Reduced |
| | 1 of 1 | 0 of 1 | 0 of 1 |
| 7. Consultation and Engagement | Undertaken | Due to be Undertaken | Not Required |
| | 0 of 1 | 1 of 1 | 0 of 1 |
| 8. Data and Evidence | Yes | No | |
| | 1 of 1 | 0 of 1 | |
| Summary | | | |
| The main positive impacts are: | The report demonstrates that the Council is searching for ways to secure a way forward in respect of the Aberfan Community Centre in order to protect the residents of Aberfan and its surrounding area and to ensure that the tragic events of 21 st October 1966 are not forgotten. | | |
| The main negative impacts are: | No negative impacts have been identified. | | |

ELLIS COOPER
CHIEF EXECUTIVE

COUNCILLOR GERAINT THOMAS
LEADER

| BACKGROUND PAPERS | | |
|---|------------------|-------------------|
| Title of Document(s) | Document(s) Date | Document Location |
| | | |
| Does the report contain any issue that may impact the Council's Constitution? | | No |

Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.