

**SURREY COUNTY COUNCIL****LEADER****DATE: 20 JUNE 2016****LEAD OFFICER: ANN CHARLTON, DIRECTOR OF LEGAL, DEMOCRATIC AND CULTURAL SERVICES****SUBJECT: PORTRAIT ACQUISITION ON BEHALF OF WATTS GALLERY****SUMMARY OF ISSUE:**

Watts Gallery is an important contributor to culture in Surrey and is the chief repository of the works of Victorian artists George Frederic and Mary Watts. An opportunity has arisen for Watts Gallery to acquire a portrait of *Violet Lindsay, later Marchioness of Granby and Duchess of Rutland*, painted by G.F. Watts circa 1879.

Watts Gallery has approached the Council with a proposal that it purchase the portrait on the Gallery's behalf, this would reduce the cost of acquisition by allowing the vendor to take advantage of taxation rules designed to facilitate public access to important works of art. Watts Gallery would then purchase the portrait from the Council and the Council's acquisition of the portrait would be conditional upon onward sale to Watts Gallery. In the short period between acquisition and onward sale, the Council would loan the portrait to Watts Gallery.

**RECOMMENDATIONS:**

It is recommended that the Leader agrees that, subject to authorisation from HMRC being received and the required insurance cover being in place, that:

- i. Surrey County Council enters into an agreement to purchase the portrait of *Violet Lindsay* from its current owners for the sum of £89,200.
- ii. Surrey County Council enters into an agreement to sell the portrait of *Violet Lindsay* to Watts Gallery for the same price of £89,200.
- iii. Surrey County Council enters into an agreement to loan the portrait to Watts Gallery for the short period between acquiring the portrait and selling it on.

**REASON FOR RECOMMENDATIONS:**

The proposed acquisition and onward sale by Surrey County Council (SCC) of the portrait will enable Watts Gallery to acquire an important Watts painting for display in Surrey and thus secures the future of the portrait for public benefit.

**DETAILS:****Background**

1. The Watts Gallery Artists' Village in Compton is an Arts & Crafts centre situated in the Surrey Hills which provides opportunities for visitors to explore

the work of the eminent Victorian artists George Frederic (G F) and Mary Watts in the place where they lived and worked. The Artists' Village is comprised of a number of notable buildings, including the Watts Studios, the Watts Chapel, Limnerslease and the Watts Gallery – the purpose-built gallery commissioned by G F Watts to display his work, which reopened in 2011 following a substantial £11m renovation.

2. Watts Gallery is a registered charity which promotes the understanding and appreciation of the work of these artists and promotes Compton as a centre for exploring Victorian art, social history and craft for present and future generations. It has an annual turnover in excess of £1m and a staff of 25, supported by over 300 volunteers. The profile of Watts Gallery's Artist's Village has also been significantly raised in recent years and has been described by its Director, Perdita Hunt, as "a national gallery in the heart of a small village." The Council has recently provided £1m in grant aid to support the continued ownership of Limnerslease, the former home of G F and Mary Watts, by the Watts Gallery trust.
3. At present, Watts Gallery has a collection of over 100 paintings by G F Watts on permanent display which includes portraits, landscapes and his major symbolic works. As the chief repository of the Watts collection, Watts Gallery seeks to acquire additional works when such opportunities arise. A painting known as *Portrait of Violet Lindsay, later Marchioness of Granby and Duchess of Rutland*, painted by G F Watts circa 1897 has recently been offered to it on the condition that the portrait is purchased using HMRC's national heritage taxation exemption scheme. This is a recognised and widely used tax exemption under the Inheritance Tax Act 1984. The exemption incentivises private owners to sell "pre-eminent" artwork to "Schedule 3 bodies" rather than on the open market. The scheme benefits the public by making artwork available for public access rather than passing into another personal collection or outside of the jurisdiction.
4. As a local authority, the Council is a 'Schedule 3 body' for the purpose of the exemption whereas Watts Gallery is not. By selling the portrait to the Council, its current owner would not be obliged to pay capital taxes (inheritance tax and capital gains tax), provided that the artwork is deemed by HMRC to be 'pre-eminent' for its artistic interest. Subject to Watts Gallery maintaining the artwork for the public benefit, the Council need only have ownership of the portrait briefly before being able to transfer its ownership on to them. This requirement will be a condition of the sale agreement to the Watts Gallery.
5. The portrait is presently owned by Lady Gay Charteris of Amisfield and housed in the gallery of art dealership Nevill Keating Pictures Ltd. Lady Charteris intends to transfer ownership of the portrait to her three children prior to its sale and is seeking confirmation from HMRC that
  - a. the portrait is pre-eminent; and
  - b. the gift of the portrait to her children and the subsequent sale of the portrait by her children will be tax-free transactions, provided that the portrait is sold to a Schedule 3 body.
6. The portrait has been offered for sale to the Council at a price of £89,200 which is calculated to reflect the tax advantages to the seller of selling the portrait to the Council, rather than on the open market. If Watts Gallery were

to purchase the portrait directly the seller would be liable for capital taxes on the sale and would expect a higher purchase price in the region of £100,000.

7. Watts Gallery is keen to acquire the portrait and has requested that:
  - a. The Council purchases the portrait from the seller for £89,200;
  - b. the Council sells the portrait to Watts Gallery, at the same price, four weeks after acquiring it; and
  - c. during the four week period between acquisition and onward sale, the Council loans the portrait to Watts Gallery.
8. This transaction will only proceed once authorisation has been received from HMRC.
9. The portrait will enhance the Gallery's collection and the administrative assistance provided by the Council will be acknowledged by Watts Gallery on publicity materials relating to the portrait.

#### **CONSULTATION:**

10. The Chief Executive was approached in relation to this matter by Perdita Hunt, Director of Watts Gallery, in May 2016. Further meetings and discussions have taken place between the Leader, the Council's Head of Cultural Services and the Director of Legal, Democratic and Cultural Services.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

11. **Provenance:** Before purchasing the portrait, the Council will require the seller to supply evidence of good provenance. The portrait has been publicly displayed as the work of G F Watts since 1884 so it is not expected that there will be any issues regarding the portrait's authenticity.
12. **Assurance of onward sale:** The Council will enter into a sale agreement with Watts Gallery prior to purchasing the portrait. The sale will be conditional upon the Council acquiring the portrait and, once this condition is satisfied, Watts Gallery will be obliged to purchase the portrait from the Council.
13. **Insurance and indemnity:** The loan of the portrait to Watts Gallery will take effect immediately following the Council's purchase of the portrait and Watts Gallery will insure the portrait and indemnify the Council against any loss or damage to the portrait from this point onwards. Watts Gallery will also be responsible for collecting, packing and transporting the portrait from its present location to the Gallery, so the Council will not bear any risks in this respect.

#### **Financial and Value for Money Implications**

14. The Council will bear its own costs in connection with the purchase and onward sale of the portrait, the only anticipated cost being time.
15. During the loan period, Watts Gallery will bear the costs of insuring the portrait and the incidental costs of packing and transporting the portrait to the Gallery.

### **Section 151 Officer Commentary**

16. HMRC's national heritage taxation exemption scheme is a recognised and widely used tax exemption under the Inheritance Tax Act. It incentivises the sale of artwork held privately, so that it can be made available for public access.
17. This scheme will only proceed once authorisation has been received from HMRC, the required insurance is in place and the necessary legal due diligence has been undertaken.
18. The Section 151 Officer notes that the no administration fee is being charged for this transaction and suggests that this is considered.

### **Legal Implications – Monitoring Officer**

19. Section 14 of the Public Libraries and Museums Act 1964 provides a power for the Council to make contributions towards expense incurred by any person–
  - (a) in providing or maintaining a museum or art gallery in any place within England or Wales; or
  - (b) in providing advisory or other services or financial assistance for the benefit of a museum or art gallery in any such place.
20. In addition, section 111 of the Local Government Act 1972 enables the Council to do anything (whether or not involving the acquisition or disposal of any property or rights) which is conducive or incidental to the discharge of its any of its functions. Section 1 of the Localism Act 2011 provides a general power of competence for the Council to do anything that individuals generally may do.
21. HMRC guidance confirms that a private treaty sale of property of requisite standard to a Schedule 3 body is not a chargeable occasion for capital taxes, even where ownership is subsequently passed to a non-Schedule 3 body, providing that the non-Schedule 3 body preserves the property for public benefit.
22. The arrangements for the acquisition, loan and onward sale of the portrait will be formalised by separate legal agreements in accordance with the terms set out in this report. The agreements will be finalised by the Director of Legal, Democratic and Cultural Services acting on behalf of the Council, after consultation with the Chief Executive and the Leader.

### **Equalities and Diversity**

23. The public sector equality duty (section 149 of the Equality Act 2010) applies to the decision to be made by the Leader in relation to this report. There is a requirement when deciding upon the recommendations to have due regard to the need to advance equality of opportunity for people with protected characteristics, foster good relations between such groups and eliminate any unlawful discrimination.

24. The acquisition and onward sale of the portrait to Watts Gallery will secure public access to the portrait. The Watts Gallery Artists' Village has good access for disabled people, including dedicated parking spaces, an access toilet and available wheelchairs on site. Watts Gallery is in the process of developing additional facilities to further improve access.

<b>WHAT HAPPENS NEXT:</b>
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25. The Director of Legal, Democratic and Cultural Services will finalise the terms of the purchase, sale and loan agreements in consultation with the Chief Executive and the Leader which will then be formally completed.

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**Contact Officer:**

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**Consulted:**

Leader  
Chief Executive  
Director of Legal, Democratic and Cultural Services  
Director of Finance  
Head of Cultural Services

**Sources/background papers:**

- HMRC Memorandum – Capital Taxation and the National Heritage (2013)
  - Arts Council England – Private Treaty Sales
  - “Preservation for the public” – Harriet Atkinson, Trusts and Estates Law & Tax Journal (2012)
  - Watts Gallery – The Annual Report 2014/2015
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