

SURREY COUNTY COUNCIL**CABINET****DATE: 26 FEBRUARY 2019****REPORT OF: JULIE ILES, CABINET MEMBER FOR ALL AGE LEARNING****LEAD OFFICER: LIZ MILLS, DIRECTOR OF EDUCATION, LIFELONG LEARNING AND CULTURE****COMMUNITY PEOPLE****VISION****OUTCOME:****SUBJECT: SURREY PERFORMING ARTS LIBRARY- EVALUATION OF NEWSPAL BUSINESS PLAN****SUMMARY OF ISSUE:**

The Surrey Performing Arts Library (SPAL) was relocated to Ewell library on an interim basis in September 2018 to provide continuity of service to users whilst making financial savings.

The collection, developed over several decades, plays a significant role in supporting the cultural life of the county. As such, Surrey County Council (SCC) must exercise due diligence and have regard to its future well-being.

SPAL is a specialist and non-statutory service. It had previously been identified that full savings from SPAL and additional benefits could potentially be delivered if the SPAL collection and its operation were transferred to a new charity, NewSPAL. The new form of governance would enable the organisation to develop its own clear identity and attract funding and support that would not be possible if the SPAL remained part of SCC. Transfer of the collection to NewSPAL will enable the collection to be promoted and used more widely. It will also provide the opportunity to re-invigorate the collection and secure investment to give the service a sustainable future for Surrey residents and groups.

To this end, NewSPAL was developed by interested users and stakeholders (such as Making Music and Friends of SPAL) as a distinct organisation and registered with the Charity Commission in January 2018. The charity has no connection with Surrey County Council.

On 26 June Cabinet agreed a recommendation that NewSPAL should be invited to prepare a comprehensive business plan to take on, manage and sustain the collection, keeping it available to the public and giving it a future independent of the County Council. After an agreed transition period of 2 – 3 years SCC would no longer have responsibility for the collection.

NewSPAL has now presented its business plan which has been consulted upon and evaluated. This report summarises the evaluation and the reasons for the recommendations.

RECOMMENDATIONS:

It is recommended that:

1. Approval be given for NewSPAL, using the current SPAL collection and equipment, to offer a Performing Arts Library service to the public.
2. Authority be delegated to finalise the phased transfer of the collection and equipment on a conditional basis for a defined period to the Director of Education, Lifelong Learning and Culture and the Cabinet member for All Age Learning in anticipation of a final unconditional transfer and gifting of the collection and equipment.
3. The responsible officer should agree a set of performance measures with NewSPAL throughout the transition period in order to evaluate progress and performance and inform the final decision by SCC on the transfer.
4. Approval is given for officers to set a deadline for completion of the lease negotiations between NewSPAL and Woking Borough Council that is appropriate with the transition period.
5. Approval is given to the responsible officer to report annually on progress towards the final transition to the Cabinet Member for All Age Learning.
6. The final decision on unconditional transfer and gifting of the collection and equipment to be taken by the Cabinet at the end of the transitional period.

REASON FOR RECOMMENDATIONS:

The public consultation on options for the future for the Surrey Performing Arts library carried out in 2017 indicated a strong level of public support for an independent future for the service which would provide new opportunities for development and funding streams not currently available.

NewSPAL's proposals have received expressions of support from potential users. They have presented a business plan which on evaluation by officers is seen to be capable of delivering an independent future, keeping the collection available to the public and helping preserve part of a national network of performing arts libraries. The viability of the new operating model will be tested during the two-three year transition period before the Cabinet is asked to consider a final transfer.

Officers will agree a set of performance measures and milestones with NewSPAL for the transition period to ensure that options for the future of the collection can be brought back to SCC should NewSPAL meet barriers that they cannot overcome. The recent public consultation on NewSPALs service offer has indicated a high level of support for NewSPAL taking on the service - with respondents stating they would use the new service as often as they use the current service. This level of support extends to the potential new location of Woking and any other location should Woking not materialise.

DETAILS:

1. The library service has met and worked with NewSPAL since its inception. NewSPAL has produced a full business plan setting out its aims and aspirations and how it intends to achieve them. As the business plan is comprehensive NewSPAL were invited to provide a letter summarising its business plan and this is attached as annex A.
2. The business plan covers how the charity NewSPAL is set up, its objectives, organisation and structure. The objectives of the charity as expressed on their Charity Commission page are:

“The promotion, improvement, development and maintenance of public education in, and appreciation of, the art and science of music, drama and other performing arts through the provision of a lending library of musical, dramatic and other performing arts material and literature.”
3. NewSPAL has established itself as a Charitable Incorporated Organisation (CIO) - a form of legal entity which combines the benefits of charitable status with those of an incorporated limited liability company. As a CIO NewSPAL is legally able to deliver all the tasks and functions necessary to operate a community enterprise (such as owning or leasing premises, entering into contracts and employing staff) but it is not permitted to pay any dividends or distribute any profits to its members. Any profits must be reinvested in the services it provides. It will have up to eight trustees (unpaid) and its first trustees are individuals with a good depth of knowledge of the Performing Arts, the needs of users, and a range of skills and experience.
4. NewSPAL will review the payment structure and its offer will differ from that of SCC in several areas. Non-group users will pay a subscription to become members of the library; for users not collecting and returning on-site, there will be a chargeable direct home delivery courier/drop box service replacing the current free collection/delivery points at Surrey and West Sussex libraries; the bespoke performing arts IT system will result in a more flexible and user friendly catalogue giving users more control over their requests and accounts on a 24 hour basis compensating for initial shorter opening hours. A comparison of the SCC SPAL service offer and the proposed NewSPAL service offer is attached at Annex B.
5. NewSPAL and SCC will work together to transfer the management and eventual ownership of the collection through an agreement signed by both parties covering performance and financial information. There will be a transition period during which the collection and equipment will be conditionally loaned to NewSPAL. This transition period is expected to last between two and three years. The agreement will detail the train of events should those agreed conditions not be met. On successful completion of transfer arrangements SCC will no longer have any influence over, or responsibility for the collection in the future and NewSPAL will operate completely independently of SCC. It should be noted that NewSPAL will be able to change the title by which the collection is known and branded if they so wish. Should there be no successful completion of transfer arrangements, the material will remain in the ownership of SCC and a decision made upon its future at that point.

CONSULTATION

6. In August 2017, SCC launched a consultation on the future of the SPAL on which the majority supported the option for an independent future (62% either agreed or strongly agreed with the option to transfer ownership either in part or full to a community or other organisation on the understanding that the stock would continue to be available to the public).
7. Based on that reaction from users, the Cabinet at its meeting on 26 June 2018 felt that the support for NewSPAL, as the charity with the potential to take on the service, was such that they invited NewSPAL to prepare a comprehensive business plan. Subsequently NewSPAL presented their business plan and SCC, as a statutory requirement because of the proposed changes to the service offer, ran a public consultation from 19 December 2018 to 3 February 2019. This was made available on line, with hard copy on request and was promoted by email to library users, posters in libraries, social media, Surrey Matters and via FOSPAL.
8. Results of the most recent survey indicate a high level of support for NewSPAL taking on the service – with 58.0% “strongly agreeing” and the a further 26.1% “agreeing” – total 84.1%; and across a range of questions relating to changes to the service under the NewSPAL model respondents generally indicated that they would use the new service as often as they use the current service. Summary of analysis is attached at Annex C.
9. The consultation referenced Woking as a new location for SPAL – 70.8% of the respondents “strongly agreeing” or “agreeing” with this proposal. In response to a further question about the impact of a move to a location other than Woking, 71.1% indicated they would use the service as much as they do now. Thus, should NewSPAL need, for any reason, to subsequently find premises elsewhere the location of SPAL does not appear to be an issue with users.

RISK MANAGEMENT AND IMPLICATIONS

Business Plan Evaluation

10. Officers from the library service, Finance and Legal have evaluated NewSPAL’s Business Plan. SCC is sensitive to the importance and value of the SPAL collection, largely bought from public money, to both its users and national performing arts. Consequently it wishes to ensure as far as possible that NewSPAL can effectively take on, manage and sustain the collection, keeping it available for the public in the long term.
11. The library service has worked with NewSPAL while they have been developing their business plan. While recognising that NewSPAL will have a new life, identity and aspirations of its own, during this period the library service has asked for attention in the business plan to a number of areas in the interest of users and to transition planning to which NewSPAL has positively responded.
12. It should also be noted that NewSPAL have been successful in achieving significant financial support from pledges in a short time and so while there

may be inevitably some element of risk in transfer to a newly established organisation it has to date demonstrated commitment to a business-like approach about taking on the responsibility of the library and achieving an independent future.

13. To reduce risks currently an agreement is being drawn up which will be signed by SCC and NewSPAL outlining the roles of both parties and terms and conditions of the conditional loan period of the collection. Ownership of the collection will remain with SCC until it is mutually agreed that NewSPAL is financially stable and ready to be independent at which point the collection will be gifted to NewSPAL free of charge.
14. The transition period of 2 – 3 years has been put in place to manage the risk that NewSPAL are not able to deliver a sustainable business model during that time. The risk of loss of the collection for public access is addressed by the provision that if SCC and NewSPAL are unable to achieve a satisfactory mutual agreement regarding any final transfer then the material will remain in the ownership of SCC and a decision made upon its future at that point.
15. NewSPAL will be required to make its own arrangements with Making Music regarding the Kirby collection and the smaller amount of material in the collection from SEPSIG will similarly require NewSPAL to negotiate. SCC will set out a number of requirements which NewSPAL will be asked to complete before the conditional loan of the collection starts, and during this period NewSPAL will be required to share regularly a prescribed list of information including accounts, statistics, and other information which SCC requires which will allow it to assess progress towards suitability for independence.

Finance Evaluation

16. Previous changes to staffing and charges together with the current interim placement of the SPAL collection at Ewell library has provided savings of approximately £150,000 (of the original £180,000 required) and is set to release the cost of its previous premises.
17. While SPAL remains within the library service, as a non-statutory part of the service, it will be subject to local government pressures. Aside from the transfer of stock furniture and equipment the County Council is not making any financial contribution to NewSPAL. It would operate independently from the County Council. In order to demonstrate how it would operate NewSPAL have produced a medium term business plan.
18. Currently there are no known local authority performing arts libraries that operate without some form of subsidy. The business plan intends to address this by keeping costs low, maintaining/increasing earned income, and accessing additional funding.
19. One large cost saving is through the expected rent free provision of accommodation which has been offered by Woking Borough Council. This has not been formally confirmed and whilst this support is a very welcome cost reduction, it does introduce an element of risk over future cost increases

if this subsidy is withdrawn and rental charges introduced. This will need to be borne in mind for NewSPAL's longer term financial planning.

20. Another cost saving is through the reduction in operating hours and a low planned level of staffing, possibly supplemented by volunteers. This could potentially be at odds with the business plans intention to grow the business.
21. The business plan takes a prudent approach to the expected level of continuing subscriptions, by basing elements on 75% continuation. To partly supplement this the intention is to introduce subscription fees for individual users, who currently borrow stock free of charge as part of the current service offering. This is expected to be the service's highest subscription income, generating an estimated £15,000 of the projected £38,000 annual subscriptions total. With an estimated operating surplus of only £11,000 from the second year onwards, the service will be very reliant upon these subscriptions and could prove difficult if the expected level is not achieved.
22. In order to set up an agreed reserve and be able to fund initial set up costs to enable operations to start, NewSPAL will need to raise enough funding to cover a significant amount of their first year's operating costs up front in advance of any transfer. The business plan does not currently contain a cash flow forecast to show the level required but it is estimated it could be up to £100,000. The forecast will need to be provided with required funding in place before the conditional transfer can be finalised and actioned.
23. The NewSPAL trustees are well known and experienced within the field. They have already been successful in generating significant pledges of financial support. In order to fund the above these will need to be converted into actual donations before the transfer is actioned.

Legal Services Evaluation

24. The CIO model offers the Council some comfort in the future operation of NewSPAL. Assets are "locked" in such organisations, they cannot be "sold off" and must also be passed to a similar organisation should the NewSPAL CIO close for any reason. The objects of the CIO (i.e. what the CIO exists to do) are also subject to approval by the Charities Commission and could only be changed with their consent.
25. The business plan acknowledges the significant legal and regulatory requirements involved in establishing and operating a new CIO. The plan places a heavy reliance on pro bono expert advice on an ongoing basis. NewSPAL may need to meet additional costs in order to successfully develop its offering and remain legally compliant should this free advice not be forthcoming.
26. Various additional funding routes are identified in the business plan. The potential for grant funding from other bodies is particularly highlighted. Given that no applications have yet been made, it is impossible to state with any level of certainty whether they will be successful. However, the initial trustees are expert in their fields and as such should be aware of suitable funding schemes and how to access these.
27. The date of the conditional loan of the stock to NewSPAL commencing is as yet undetermined and is subject to a number of pre-conditions including

securing a lease of the premises and re-cataloguing the existing stock (while it is at Ewell Library). These pre-conditions are outside of NewSPAL's sole control and as such delays to their anticipated timetable may occur.

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28. There are a number of risks associated with the transfer of stock and sustainability of these new arrangements. These include, the timing of income and expenditure, which could lead to cash flow problems; the assumption of a five year rent free period and potential subsequent increases in costs; maintaining and developing income in light of the downward trend in recent years and the introduction of new charges, and subscriptions for individual users, which did not previously exist; and, generating donations and/or fund raising in order to fund initial set up and potentially ongoing running costs.
29. In order to mitigate these risks, it is proposed that the stock will transfer to NewSPAL as a conditional loan for a period of at least two years until the ongoing viability of the new arrangements has been demonstrated. During this period the stock will remain under the ownership of and be insured by Surrey County Council. It is therefore essential that a robust financial assessment is undertaken before any unconditional transfer is actioned.
30. In order to further protect the Council from potential future costs, the S151 officer recommends that the shelving and rolling stock are also transferred initially as a conditional loan, and the level of financial reserves on transfer date includes a provision for the cost of returning all Council Assets.
31. It is also recommended that NewSPAL provide a cash flow forecast in order to establish the level of funding required to be raised before the transfer can be actioned and operation started. This should be provided before the Agreement is finalised.

LEGAL IMPLICATIONS – MONITORING OFFICER

32. The Council is under a general statutory duty by virtue of Section 7(1) of the Public Libraries and Museums Act 1964 'to provide a comprehensive and efficient library service for all persons'. SPAL falls outside of this general duty due to its specialist nature and as such is a discretionary service. Notwithstanding this, the Council is subject to the normal public sector requirements for consultation, equities and to deliver best value in considering future operating models for SPAL.
33. Following receipt of NewSPAL's business plan, a new consultation into the future of the Surrey Performing Arts Library took place between 19 December 2018 and 3 February 2019. The full results are annexed to this report. In considering the proposals, members must give due regard to the results of the consultation and conscientiously take these matters into account when making a final decision.
34. The public sector equality duty contained in Section 149 of the Equality Act 2010 applies to the decision to be made by Cabinet in this report. This duty requires Cabinet 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. These

matters are dealt with in the equalities paragraphs of the report below, and in the attached equalities impact assessment (EIA). Cabinet must take into account the equality impacts identified in the EIA, together with any relevant mitigation highlighted in the action plan.

35. The Council is under a 'best value authority' by virtue of Section 3 of the Local Government Act 1999 and must "make arrangements to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness". In making its decision Cabinet will need to balance the efficiency savings required, ensuring the effective delivery of the main statutory library service and the potential future delivery of SPAL in any form.
36. Cabinet is being asked to approve a conditional transfer of the existing SPAL stock and equipment to NewSPAL. Following a transitional period, a further report will be brought to Cabinet prior to any unconditional transfer being made. The transfer agreement will contain safeguards for the existing stock and equipment during the transitional period. Legal Services is instructed on preparing the transfer agreement between NewSPAL and the Council.

EQUALITIES AND DIVERSITY

37. An Equalities Impact Assessment of NewSPAL's business plan has been completed.
38. NewSPAL has yet to finalise a location but have had advanced discussions with Woking Borough Council and identified a potential site within the town centre.
39. **Potential Negative Impact:** The proposal may result in users needing to travel a greater distance to obtain the service, which may incur greater cost, inconvenience and time.

This may have a negative impact on the following protected groups:

- Disability, Pregnancy & Maternity, Carers due to reduced accessibility.
- Age and Sex due to greater representation of older female users of this material.

40. **Potential Positive Impact:** The transition of the collection into Woking would result in greater accessibility and exposure to the public of the collection.

The proposal may result in users needing to travel a shorter distance to obtain the service, which may incur less cost, inconvenience and time.

This may have a positive impact on the following protected groups:

- Age, Disability, Pregnancy & Maternity and Carers due to improved accessibility.
- Age and Sex due to greater representation of older female users.
- Race and Religion and belief due to greater representation in the locality of White Other, Pakistani and Muslim population.

41. Key mitigating actions planned to address any outstanding negative impacts. Putting in place a variety of collection/delivery options. Consideration to be given following user feedback on opening hours.
42. Potential negative impacts that cannot be mitigated. None identified.

WHAT HAPPENS NEXT:

43. The stages of the transition will be
- a. Signing of an agreement between NewSPAL and SCC including a conditional loan of the stock.
 - b. A setting up period when NewSPAL deals with establishing its premises including furniture and fittings (to be transferred from the library service), staff, business arrangements, new IT system, transfer of catalogue details onto the new system, registration of members and promotion of the new service. During this period SCC will continue to run the service from Ewell. Note: SCC will not be making any contribution to the costs of installing equipment or moving the collection to NewSPAL's premises.
 - c. During the conditional loan period, NewSPAL will run the service from its premises and become financially and managerially responsible for the service while the collection stays the property of SCC and contact will be maintained.
 - d. The agreement will include a range of requirements for both partners including sharing of information and data which will provide SCC with a view of how NewSPAL is progressing towards a level of financial security and stability where it would be appropriate to unconditionally transfer, free of charge, the SPAL collection permanently to NewSPAL. This could take up to 2 or 3 years.
 - e. Once the unconditional transfer has been made, SCC will no longer have any influence over, or responsibility for the collection in the future and NewSPAL will operate completely independently of SCC.
44. The Library Service will work with NewSPAL to keep users fully informed during the transfer process.

Contact Officer:

Lesli Good, Interim Assistant Director, Libraries, Culture and Life-Long Learning.

Consulted:

Legal and Finance officers, NewSPAL and via that organisation the general public, library members.

Annexes:

Annex A - Summary of NewSPAL business case

Annex B - Comparison of services

Annex C - Summary of public consultation - 19 December to 3 February 2019

Annex D - Equalities Impact Assessment

Sources/background papers:

NewSPAL business plan
