

South Lakeland District Council
Cabinet
Wednesday, 09 March 2022
Disposal of Ellerthwaite Depot

Portfolio: Finance and Resources Portfolio Holder
Report from: Director of Customer and Commercial Services
Report Author: Sion Thomas – Operational Lead Delivery and Commercial Services
Wards: Bowness & Levens; Windermere;
Forward Plan: Key Decision included in the Forward Plan as published 25.05.21

Links to Council Plan Priorities:

- Delivering a Balanced Community – A South Lakeland for all ages.
 - Delivering a fairer South Lakeland – A South Lakeland for everyone.
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1.0 Expected Outcome

1.1 To create and provide fit for purpose accommodation for the Windermere and Bowness Town Council and the release of Langstone House, Broad Street, Windermere for affordable housing.

2.0 Recommendation

2.1 It is recommended that Cabinet:-

(1) Delegates authority to officers to undertake a feasibility of Langstone House with a view to creating affordable housing on the site either through re-configuration of the existing premise or re-development of the site, with a further report to be brought back for Cabinet approval for the affordable housing scheme.

(2) Approve in principle the disposal and development of Ellerthwaite Depot at less than best consideration and in accordance with the draft Heads of Terms in Appendix 2 to Windermere and Bowness Town Council; and

(3) Delegates authority to agree the terms of the Disposal and to enter the Agreement to Lease and surrender of user rights and any existing occupational agreements of Langstone House to the Director of Customer and Commercial Services in conjunction with the Lead Specialist for Legal, Governance and Democracy, Operational Lead for Delivery and Commercial Service and Lead Specialist for Finance.

3.0 Background and Proposals

3.1 Langstone House, Broad Street, is owned by the District Council. The District Council moved their parking services team who had previously occupied Langstone House to the Westmorland Shopping Centre multi storey car park. Langstone House has been declared surplus to requirements by the District Council although Windermere and

Bowness Town Council have statutory user rights and remain in occupancy indefinitely. The District Council have previously considered developing Langstone House for affordable housing for the local community.

- 3.2 Windermere and Bowness Town Council have statutory user rights in Langstone House which arose to assist local councils after local government reorganisation and under the provisions of under the Local Authorities (England) (Property etc) Order 1973. The District Council have been working alongside Windermere and Bowness Town Council with a view to finding an alternative location for the Town Council in order to realise the potential of Langstone House as affordable housing.
- 3.3 As part of the Asset review undertaken by the District Council, Ellerthwaite Depot located in Broad Street car park which is also surplus to requirement was put forward for development to create a new commercial unit close to the Town centre which could be leased by the authority for a commercial rent.
- 3.4 Following discussions with the Town Council it was agreed that officers would undertake a feasibility study to understand if Ellerthwaite Depot could be developed to provide suitable accommodation for Windermere and Bowness Town Council. The Council's property services provider has developed designs to meet the needs and standards as requested by the Town Council and the Town Council have agreed in principle to relinquish their user rights in Langstone House in return for a refurbished and re-configured depot building. The proposed design can be seen in Appendix 1 and draft Heads of Terms's in Appendix 2.
- 3.5 As well as the asset transfer of Ellerthwaite Depot, Windermere and Bowness Town Council have requested 1 No. designated car parking space in Broad Street car park next to the depot and to be consulted and approve the end use of Langstone House to ensure that Langstone House is to be used for affordable housing in the future and not developed for other commercial uses. Whilst the overall outcome for the site is to be agreed with Windermere and Bowness Town Council, agreement over delivery model and any housing provider engagement will be limited to the District Council and new Authority to approve.
- 3.6 When entering into land transactions, local authorities are required to obtain the best consideration reasonably obtainable except with the consent of the Secretary of State. Under the Local Government Act 1972, General Disposal Consent (England) 2003, local authorities may make a disposal for less than best consideration in the following circumstances:
 - a) The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area.
 - i)the promotion or improvement of economic well-being.
 - ii)the promotion or improvement of social well being
 - iii)the promotion or improvement of environmental well-being.
 - b) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal not to exceed £2,000,000.
- 3.7 To conclude, it is the future development of affordable housing on the Langston House site which justifies the less than best terms for the lease to the Town Council. It is important to note that justification of a less than best consideration for a less than best transaction can only be confirmed once the results of the feasibility study are known

and providing further that the results of the feasibility study confirms that an affordable housing scheme on the Langstone House site is viable (and subject to further report to Cabinet as mentioned above). Officers are seeking approval to develop the Ellerthwaite Depot and undertake an asset transfer to Windermere and Bowness Town Council and to undertake a feasibility study on Langstone House to consider affordable housing before seeking a further approval for works required to Langstone House and subject to the outcome of the feasibility study. Officers will ensure that an affordable housing scheme is viable on Langstone House site prior to entering into any building contracts for the Ellerthwaite Depot scheme to ensure that the Council can justify the less than best leasehold transaction with the Town Council and can satisfy itself that such a transaction is not in breach of the Local Government Act 1972, General Disposal Consent (England) 2003.

4.0 Appendices Attached to this Report

(delete if no appendices attached)

Appendix No.	Name of Appendix
1	Proposed Design of Ellerthwaite Depot
2	Draft Heads of Terms – Part II
3	Valuation of the existing and developed site of Ellerthwaite Depot
4	Health, Social, Economic and Environmental Impact Assessment

5.0 Consultation

- 5.1 Windermere and Bowness Town Council have been consulted throughout and have agreed to end their user rights in Langstone House in order to secure a new building within Broad Street, which will allow an affordable housing scheme to be taken forward for Langstone House.
- 5.2 Officers have consulted with the portfolio Holder, housing team, finance, legal and corporate management team prior to bringing this report to Cabinet for approval.

6.0 Alternative Options

- 6.1 Do nothing – this is not a favoured option as the Council fails to adhere to its asset management strategy to make the best use of its assets and fails to bring forward affordable housing for the Town.
- 6.2 To proceed with development of Ellerthwaite Depot for commercial rent only and continue with Windermere and Bowness Town Council using Langstone House. This is not a favoured option as whilst development of the depot would be in line with the Council Asset Management Strategy, it would fail to realise affordable housing units within the centre of Windermere.

7.0 Implications

Financial, Resources and Procurement

- 7.1.1 The current Capital Programme has already earmarked £90,000 for development of Ellerthwaite Depot for commercial use. Therefore, officers are not requesting any further Capital costs for this development but the development will no longer be for commercial letting.
- 7.1.2 The Council's estate management team through a Registered RICS Valuation surveyor has confirmed that the value of the unit when completed will be worth

£140,000 and a rental income of £8,000 per annum. Valuation as shown in Appendix 3.

- 7.1.3 Current premises expenses costs on Langstone House amount to £18,172/ annum. Whilst not all these costs can be omitted with the closure of Langstone House, it is estimated that until Langstone House is redeveloped, the premises expenses will reduce by £7,817.00. Therefore whilst the Council forgoes the rent to Windermere and Bowness Town Council, costs for the Council will also reduce in line with loss of income. Premises costs for Langstone House would be removed once it is redeveloped for affordable housing.
- 7.1.4 The proposed development of Langstone House for affordable housing would not be possible without Ellerthwaite Depot being developed and transferred at less than best to Windermere and Bowness Town Council. The development of Langstone House for development falls under the Local Government Act 1972; General Disposal Consent (England) Order 2003, and therefore the Local Authority may make a disposal for less than best consideration. In this instance, development of Langstone House would need to be purposed for affordable housing.

Human Resources

- 7.2 There are no human resource implications with this proposal.

Legal

- 7.3.1 In general, a local authority has a duty not to dispose of land for less than best consideration that can reasonably be obtained under the provisions of S123 Local Government Act 1972. However, under the Local Government Act 1972, General Disposal Consent (England) Order 2003, a local authority is able to dispose of land at an undervalue providing that undervalue does not exceed £2,000,000 and that the circumstances outlined in paragraph 3.6 above have been met.
- 7.3.2 Members are being asked to make decisions in principle on Ellerthwaite Depot before a feasibility study has been carried out on Langstone House which is hoped could justify a less than best consideration for the disposal of Ellerthwaite Depot. In addition, any 'in principle' recommendations in this report will be subject to the grant of planning permission for the change of use of Langstone House. Without the certainty of the results of the feasibility study on Langstone House (and without planning permission for change of use), Legal Services cannot confirm that a less than best transaction of Ellerthwaite Depot can be justified under the General Disposal Consent (England) Order 2003.
- 7.3.3 In addition, under the Subsidy Control Regime introduced in January 2021, the Council will be required to consider whether or not the terms of the disposal of Ellerthwaite Depot constitute a subsidy; and If so, to take steps to consider which International obligations need to be met. If the subsidy is found to be within the scope of UK-EU Trade and Co-operation Agreement then the Council must ensure that the subsidy meets the principles set out therein. Failure to do so could leave the Council exposed to Judicial Review. Furthermore, there are requirements for subsidies to be recorded transparently and in a timely manner. Officers will work with Legal Services to assess and progress these steps.
- 7.3.4 The user rights relating to the use of Langstone House by Windermere and Bowness Town Council will need to be surrendered or otherwise terminated in accordance with the requirements of any existing agreement.
- 7.3.5 Any other occupational rights in respect of the use of Langstone House by Windermere and Bowness Town Council or others will need to be surrendered in accordance with the terms of those agreements and any statutory provisions and/or time limits.

- 7.3.6 Due to the location of Ellerthwaite Depot at Broad Street Car Park and the proposed agreement, due consideration and appropriate flexibility will need to be incorporated in to the agreement to permit the District Council (and its successors in title) to repurpose the Car Park or vary its layout and thereby varying the right of way over the Car Park to Ellerthwaite Depot.

Health, Social, Economic and Environmental

- 7.4 Have you completed a Health, Social, Economic and Environmental Impact Assessment? Yes
- 7.5 If you have not completed an Impact Assessment, please explain your reasons: N/A

Equality and Diversity

- 7.6 Have you completed an Equality Impact Analysis? No.
- 7.7 If you have not completed an Impact Assessment, please explain your reasons: It is not required for this report.

Risk

Risk	Consequence	Controls required
To dispose of Ellerthwaite Depot at less than best before outline planning obtained for affordable housing scheme at Langstone House.	Council could be in breach of Local Government Act.	Planning to be sought for outline planning consent for Langstone House prior to lease being signed with Windermere and Bowness Town Council.

Contact Officers

Sion Thomas, Operational Lead for Delivery and Commercial Services 01539 793192,
sion.thomas@southlakeland.gov.uk

Tracking Information

Signed off by	Date sent	Date Signed off
Legal Services	11.02.22	28.02.22
Section 151 Officer	11.02.22	28.02.22
Monitoring Officer	11.02.22	28.02.22
CMT	11.02.22	24.02.22

Circulated to	Date sent
Lead Specialist	N/A
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	11.02.22
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A