

COUNCIL

21 NOVEMBER 2019

Report of Estates & Facilities Manager

FORMER PUBLIC CONVENIENCES & LAND TRANSFER – MONSAL HEAD

PURPOSE OF REPORT

Following the closure of the Monsal Head Public Conveniences in May 2017 discussions have taken place with the neighbouring landowner (Penelope Thornton Hotels) with the aim of agreeing terms for the freehold transfer of the former public conveniences building together with some adjacent leased land to enable future provision of public convenience facilities at this site at no cost to the District Council. This report updates members on the outcome of the negotiations and recommends a course of action should final agreement not be reached.

RECOMMENDATION

1. That the revised terms and timescales outlined in paragraph 3 of this report for transferring the freehold of an area of land and the public conveniences at Monsal Head as shown on the plan at Appendix 1 to Penelope Thornton Hotels (PTH) for use as car park and public conveniences are agreed.
2. That should the terms proposed not be accepted by PTH and/or should the transfer not complete by 31st January 2020, the offer to transfer the site to PTH is withdrawn and that the Estates and Facilities Manager be given delegated authority to negotiate, agree and implement a Community Asset Transfer of the facility to the proposed Community Interest Company referred to in paragraph 2.5 of this report within 6 months of the date of this decision and should this not be achieved, the asset be placed on the open market for freehold sale by public auction.
3. That it be noted that the transfer described in paragraph 1 above comprises an undervalue transaction as permitted by the General Disposal Consent 2003.

WARDS AFFECTED

Bakewell ; Litton and Longstone

STRATEGIC LINK

The transfer of the site for use as public conveniences supports the District Council's corporate aim to promote quality of life and also makes a significant contribution to the safety and health of the community of Derbyshire Dales. The proposal to sell the freehold of the site by public auction should final agreement not be reached accords with the aim of achieving value for money.

The proposal accords with the District Council's priorities whilst also seeking to ensure that we deliver value for money and work effectively with community partners.

1 BACKGROUND

- 1.1 Council will recall that the public conveniences at Monsal Head were one of a number of sites approved for closure as part of the Review of Public Conveniences considered by Council on 30th April 2018. At this meeting it was resolved that the Monsal Head public conveniences be closed on 14th May 2018 and that the Estates and Facilities Manager be given delegated authority to negotiate, agree and implement a transfer of the facility to the interested party (Penelope Thornton Hotels) for a use which retains a public toilet facility on the most economically advantageous terms in line with The General Disposal Consent 2003 within 6 months of the date of this decision and should this not be achieved, the asset be placed on the open market for freehold sale by public auction.
- 1.2 The decision to close the public conveniences was made on the basis of the poor condition of the building and the expenditure required to achieve modern standards, the relatively high cost of servicing and cleaning the facilities and the reasonable expectation that the proposed transfer would enable future provision of public convenience facilities at this site at no cost to the District Council.
- 1.3 A report on the proposed terms of the disposal was presented to the 19th July 2018 meeting of Governance and Resources Committee which approved the transfer on the following terms:-
- Peppercorn freehold transfer for £1 consideration.
 - Subject to existing condition and title covenants.
 - Public conveniences to have minor works undertaken to allow opening later this year with a full refurbishment of the facility and surrounding land by PTH commencing in late 2019.
 - During the major refurbishment in late 2019, alternative provision will be made within the Hotel whilst the facility is closed.
 - The building will be maintained by PTH and will be made available as public conveniences throughout the year except in the case of extreme weather.
 - Appropriate legal restrictions (via restrictive covenants/clawback/pre-emption clauses) will be in place to ensure that the former public conveniences building can only be used for this purpose and cannot be further developed or sold without further recourse to the District Council.
- 1.4 The site requested by Penelope Thornton Hotels (PTH) is shown outlined in red on the plan at Appendix 1 includes the former public conveniences and an area of land which they currently lease for hotel car parking shown cross hatched green and a pedestrian access to the rear of the Monsal Head Hotel
- 1.5 PTH occupy the car parking land which contains approximately 12 spaces under the terms of a lease from 2006 under which they have been holding over since 2012 at a current rental of £2,850pa. This lease has not been renewed pending the outcome of discussions with PTH which have been ongoing since 2012. The current rental value as at 2018 is in the vicinity of £4,000pa but maintenance to the surface of adjoining areas is required to achieve this which would require capital investment by the District Council of around £20,000
- 1.6 The public conveniences building is in poor condition and would require significant

capital investment to address building defects and bring up to modern standards. This would include new drainage, roof and joinery repairs/replacements and a total internal re-fit. The area of leased car park land is partly maintained by PTH under their lease with the remainder (which is in poor condition) being the responsibility of the District Council.

2 CURRENT SITUATION

- 2.1 Negotiations have continued slowly since the Committee report with the main difficulties arising from the implementation of the last bullet point in the disposal terms with the solicitors for PTH refusing to accept any overage, pre-emption or any other encumbrances on the transfer.
- 2.2 Discussions have continued between respective solicitors but there remains a legal risk that any restrictions we impose may not be easily enforceable. As a result the current proposal by PTH whilst providing public conveniences in the short term could allow the building to change hands and be sold in the future with no enforceable requirement to provide public conveniences on the site. The current legal opinion concludes that the legal risk of the transfer on the terms which PTH require is high. Given that the restricted value of the transaction is £70K and the unrestricted value which, with an unenforceable covenant, could be realised by the new owners in future is £100K, this also provides a high financial risk to the Council.
- 2.3 Given the legal and financial risk presented by the transfer it is proposed to retain a strip of land between the public conveniences site and the Hotel building shown which contains a small flower bed and an electricity sub-station (shown hatched black on the plan at Appendix.1). Whilst this would not guarantee that the site would remain open as public conveniences, it would prevent future use of the site in connection with the Hotel without future recourse to the Council and, as such, would restrict the value of the land, therefore acting in a similar way to an overage clause.
- 2.4 On the basis of the revised terms proposed below, it is envisaged that the arrangement with PTH will enable future provision of public convenience facilities at this site at no cost to the District Council. There will be some loss of rental income by selling the (currently leased) parking spaces but this is more than offset by the savings in running costs of the public conveniences and the capital expenditure required to repair the bitumen areas not covered under the car park lease to PTH.
- 2.5 In the last few days, an approach has been received from a group who have expressed an interest in forming a Community Interest Company to take over the ownership and operation of the public conveniences by way of a Community Asset Transfer should the proposal to transfer to the hotel not proceed.

3 PROPOSED RECOMMENDATIONS

- 3.1 It is proposed that the freehold of the public conveniences and land shown edged red on the plan at Appendix 1 but excluding the strip of land edged blue and shaded yellow be offered to PTH on the following terms:-
 - Peppercorn transfer of £1 consideration
 - subject to existing condition and title covenants

- Public conveniences to have minor works undertaken to allow opening in April 2020 with a full refurbishment of the facility and surrounding land by PTH commencing in late 2020.
- During the major refurbishment in late 2020, alternative provision will be made within the Hotel whilst the facility is closed.
- The building will be maintained by PTH and will be made available as public conveniences throughout the year except in the case of extreme weather
- Use of the public conveniences building will be restricted to this purpose by imposition of a restrictive covenant.
- Each party to bear their own legal costs.

3.2 The above terms have been proposed to PTH on a non-negotiable basis. Should the terms not be accepted subject to contract by 16 December 2019 and should the transfer not complete by 31st January 2020, it is proposed that the offer to transfer the site to PTH is withdrawn.

3.3 Should the offer to transfer to the hotel be withdrawn, it is proposed that the Estates and Facilities Manager be given delegated authority to negotiate, agree and implement a Community Asset Transfer of the facility to the proposed Community Interest Company referred to in paragraph 2.5 of this report within 6 months of the date of this decision and should this not be achieved, the asset be placed on the open market for freehold sale by public auction.

4 VALUATION

4.1 The proposed terms for the transfer of public conveniences and land at Monsal Head comprise an undervalue transaction as permitted under the General Disposal Consent 2003.

4.2 The proposal in this report is to transfer the freehold of the site but with restrictions limiting the use of the land and restricting redevelopment or sale for other uses. It is considered by the Council's Valuer that the value of this restricted sale is in the region of £70,000. If none of these restrictions were in place, the value of the assets forming part of this transaction would be in excess of £100,000.

4.3 Under the General Disposal Consent 2003, Local Authorities are permitted to dispose of any interest in land held under the Local Government Act 1972 which they consider to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area at less than best consideration subject to various conditions.

4.4 It is considered that the proposed terms for the transfer of the public conveniences and land at Monsal Head to PTH on the terms stated would comply with this legislation.

5 CONSULTATION

5.1 The relevant Ward Members and Local Council have been consulted on the proposed transfer and any comments received will be reported verbally at the meeting.

6 OTHER EXPRESSIONS OF INTEREST

6.1 None received.

7 RISK ASSESSMENT

7.1 Legal

The Council has a statutory duty under s.123 of the Local Government Act 1972 not to dispose of land for a consideration less than the best that can reasonably be obtained. Under the Local Government Act 1972 General Disposal Consent (England) 2003 general consent is given to local authorities to dispose of land where 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; and

The legal risk is therefore low.

7.2 Financial

Although the sale is an undervalue transaction, the transfer of the public conveniences and land at Monsal Head as proposed will remove a future maintenance liability for the Council and continue the provision of a community service. Therefore the financial risk is assessed as low.

8 OTHER CONSIDERATIONS

In preparing this report the relevance of the following factors is also been considered: prevention of crime and disorder, equality of opportunity, environmental health, legal and human rights, financial personal and property considerations.

9 CONTACT INFORMATION

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10 BACKGROUND PAPERS

Date	Description	Location
28.05.18	Letter from Penelope Thornton Hotels	EMN 13
04.10.18	Letter from DDDC containing proposed terms	EMN 13

11 ATTACHMENTS

Appendix 1 – Site Plan



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Scale 1: 500