

Bath & North East Somerset Council

DECISION MAKER:	Councillor Paul Roper - Cabinet Member for Economic and Cultural Sustainable Development Councillor Alison Born - Cabinet Member for Adult Services	
MEETING/ DECISION DATE:	On or after 29 March 2025	EXECUTIVE FORWARD PLAN REFERENCE: E3608
TITLE:	Fairfield House, 2 Kelston Road, Bath BA1 3QJ & 27 Burleigh Gardens, Bath, BA1 3RR – new lease	
WARD:	Newbridge	
AN OPEN PUBLIC ITEM		
List of attachments to this report: <ol style="list-style-type: none">1. Attach - Heads of Terms - lease2. Attach – lease plan3. Attach - Heads of Terms - Partnership Agreement4. Attach - FFH CIC accts to 31.03.2024 [with CIC report]5. Attach – FFH council budget/expenses6. Attach - CAT – expression of interest7. Attach - CAT - business case/plan8. Attach - Grant conditions9. Attach - Grant letter10. Attach - Valuation summary page		

1 THE ISSUE

- 1.1 This report relates to Fairfield House and 27 Burleigh Gardens at Newbridge.
- 1.2 The tenant, Fairfield House Bath CIC [CN:11901221] occupied Fairfield House under a two-year lease which was contractually to expire on

08.10.2024. The current occupation is under a Tenancy at Will from 01.10.2024. The purpose of this decision is to grant a further lease to expire on 28.09.2028 [ca 4 years] on somewhat similar terms albeit with some variation as that approved by a Single Member Decision on 04.10.2022.

- 1.3 The Tenant is working towards securing funding and resources for a longer-term Community Asset Transfer [CAT] for the property and land. However, no major grant has yet been secured (an opportunity to bid for Community Ownership Fund with support of the National Trust was unexpectedly lost when the General Election was called). They have therefore been unable to secure all the necessary funding and arrangements during the expired lease.
- 1.4 Further application has resulted in a substantial grant award from the Heritage Fund to carry out approved purposes which include replacing the boiler, appointments and development of plans for the property. The grant contains conditions including those which will place serious limitations on the Council's dealing with the property.
 - *You must continue to own the Property and keep exclusive control over what happens to it. This means you must not sell or lease the Property. Other than as permitted in the Digital Output section, shown above, you must not sell, let or part with it or any interest in it, or give any rights over it to anyone else, or take steps to do so, without our approval beforehand. Our approval may depend on the following:*
 - *that you pay us a share of the net proceeds of selling or letting the Property within one month of parting with the assets or other goods*
 - *that you sell or let the Property at its full market value*
 - *any other conditions we think apply**We may claim from you an amount in the same proportion to the sale price as the Grant is to the original cost of the Project, or the portion of the Grant spent on the assets or goods concerned, whichever is the greater. You must pay whatever we decide is appropriate in the circumstances. We may decide not to ask you to repay the Grant (or any part of it as we think fit) but it is for us to decide*
 - *Capital works, like a building or restoration, these terms and conditions will apply for five years after the Project Completion Date.*
- 1.5 A copy of the letter and the conditions is attached in the Appendices. The grant conditions will likely expire later than the expiry of the lease. Legal Services will be consulted prior to entering into any conditions.
- 1.6 The granting of a further short-term lease will allow further time for the Tenant to prepare a robust business plan and secure finance [grants]. Any future CAT long term submission would be considered in the context of relevant Council policy and in accordance with democratic processes.
- 1.7 The occupier and proposed tenant is a Community Interest Company, Fairfield House Bath CIC.

2 RECOMMENDATION

The Cabinet Member is asked to delegate to the Head of Corporate Estates &

Development authority for:

- 2.1 The granting of a new lease to 28.09.2028, which will be outside of the security of tenure provisions set out in the Landlord and Tenant Act 1954 at an annual rent of £1,200 per annum.
- 2.2 There are other on-going monetary commitments in terms of other associated occupational costs, such as utilities and rates/council tax [responsibilities are set out in the terms – Appendix 1], due to the occupation of the proposed Tenant. These are to be transferred from the Council to the Tenant, however, there will be a transition. Revenue costs to the Council to 31.03.2024 were £54,200 with anticipated for the current financial year to be £47,300 pa, with a similar level for running/revenue costs to the end of the lease. The running costs transition will be by way of revenue grants from the Council which will be defrayed from the Corporate Estate departmental budget/programme. The ultimate aim is for the Tenant to assume full responsibility for the property and to be ready to do so by 28.09.2028 without any council grants or other assistance from the Council.
- 2.3 There are no current delegations or resolutions to allow these transfers to take place at less than best consideration; best consideration being based on market values. This report, therefore, seeks to give such authorisation to the Head of Corporate Estates & Development [in consultation with the Monitoring Officer and s.151 Officer].
- 2.4 The lease will be predominantly on the basis of transferring responsibilities for the property to the Tenant with the medium/longer term intention of a standard institutional lease with the Tenant being wholly responsible for repairing and insuring the property with an abated rent. The Landlord has carried out works at the start of and during the latterly expired lease to, inter alia, keep the property wind and watertight. The terms for the next lease are as set out in the Heads of Terms attached in Appendix 1.
- 2.3 During this next lease period the tenant intends to further develop plans to apply for a further Community Asset Transfer (CAT) for a new longer lease [25 years]. The Tenant will during the lease period arrange and develop stand-alone funding, business and any partnership plans in consultation with the Council. The Tenant under the CAT will become responsible for all aspects of the property, including repairs, utilities etc. The lease would enable them to apply for external funding for repairs and other works, subject to any listed building consents.
- 2.5 It is noted that the Tenant has not managed to obtain funding and develop plans for taking ownership of the property under a longer term lease and CAT in the last granted lease. This current lease should be regarded as the last opportunity.
- 2.6 An independent valuation confirms that the property is a valuable asset which could be utilised for other council services and programmes including realising capital for other capital requirements/services or paying down debt.

3 THE REPORT

- 3.1 The property known as 'Fairfield House', is an 'Italianate' type villa built circa 1850. The property is listed grade II and known as having been a former residence of His Imperial Majesty Haile Selassie in the late 1930's to early 1940's who gifted the property to Bath Corporation for use as a home for the aged in 1959. The Property is laid out over ground and first floor with basement providing some 600 sqm of usable area. The property is listed grade 2, since 1975.
- 3.2 The other part of the property, 27 Burleigh Gardens, comprises a residential detached bungalow built in the 1970's. It provides accommodation of three bedrooms, living, kitchen and bathroom with a garden and detached garage. It seems this building was constructed to provide caretaker accommodation.
- 3.3 The properties were not in good repair and the Council has carried out some substantial works to the property to secure its integrity [effectively to make it 'wind & watertight']. The cost of the works was £271,000 [plus VAT]. Most has been absorbed by the BANES Capital Fund.
- 3.4 The property has been used since its acquisition by the Council in 1959 for a variety of uses, that include care home and community uses/offices.
- 3.5 The property has been considered for disposal by way of sale in the past for purposes of capital receipt and revenue/efficiency savings, however, this was not pursued.
- 3.6 The property was the subject of an expression of interest for a CAT on 30.10.2020 which was approved to progress subject to a business plan and other matters.
- 3.7 In the event a CAT does not ultimately take place a discussion will be held with relevant communities on the next steps which may include disposal of the Council's freehold interest in the open market. If the Tenant is successful with a CAT, then a full transfer of responsibilities to the Tenant will relieve the Council of a redundant property.
- 3.8 Fairfield House presently has no corporate or commercial use or purpose for the Council and requires investment to alter the current low environmental sustainability credentials.
- 3.9 27 Burleigh Gardens is a residential bungalow so could be utilised to provide certain council services such as temporary housing or adult care.
- 3.10 The Tenant will be supported [non-financially] by the Council to apply for external funding to make these improvements. It has the scope to achieve funding bids which would otherwise be unavailable to the Council working on its own, if it were to undertake the improvements to a redundant property.
- 3.11 This new lease to 2028 will allow further time for the Tenant to further develop plans for a longer-term CAT and to ultimately take over responsibility for the property from the Council such as repairs, utilities and other matters. There will also be a small income to cover some of the Council's running costs.

- 3.12 The new lease may also permit the undertaking of asset management initiatives by the Council to improve the property asset [for example, any building and legal title initiatives].
- 3.13 In the event of the Tenant not being able to achieve its objectives of being able to independently fully fund the running and longer-term management of the property then the Council will need to explore its options to eliminate any budgetary burdens which would include a sale of the freehold at market value.
- 3.14 Although the property was offered to donate to the Council for “use as a home for aged people”, a now redundant use, there is no legal or restrictive bar in the deed of gift to a sale. It would seem imperative for the benefit of the Tenant and community for them to achieve their objectives without further subsidy. The Council is under a general obligation to reduce or cut any non-statutory or non-essential services and would be able to use any achieved capital receipt elsewhere where needs require.

4 STATUTORY CONSIDERATIONS

- 4.1 Public health and inequalities: the Council has a statutory duty to promote the health and wellbeing of the inhabitants of its area and reduce inequalities amongst its population. The tenant CIC provides services to the local community through the Property which are set out in its business plan/case.
- 4.2 The Royal Institution of Chartered Surveyors (RICS) is the governing body for Chartered Surveyors, and they have set out guidance specifically to deal with the disposal at less than market value which should be followed unless there are particular circumstances that mean that it is not appropriate. It puts in place an audit trail so that the decision is demonstrably robust. It is, therefore, considered that this is an appropriate model for sign off of the individual transactions which should be undertaken in liaison with the Section 151 Officer. The assessment requires:
- a full valuation exercise is undertaken which identifies the maximum theoretical Market Value for the asset to be transferred.
 - calculation of the reduced values that apply because of any restrictions that the Council applies relating to things such as use, alienation, clawback, etc.
 - the value added to the Council through the outcomes of the transfer has been assessed and found to be not less than the difference between market value and the actual price to be paid.
- 4.3 Property considerations: under s123 of the Local Government Act 1972, any disposal by the Council of an asset in excess of 7 years (including leasehold interests) must obtain “best consideration”, unless Circular 06/03 The Local Government: General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained apply or a specific consent is obtained. The general consent allows specified circumstances where the consent can be applied:
- 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 does not exceed £2,000,000 (two million pounds).

4.4 Whilst this report is being prepared to permit a short-term lease (to 28.09.2028) to be granted [outside the parameters of s.123], it is a precursor to a decision for a possible longer term leasehold disposal under the Community Asset Transfer policy. To facilitate the short-term arrangement, works have been undertaken during the previous lease as noted in 3.3 above. be required to be made by the Council. No further capex works are anticipated for the Council.

4.6 The lease will enable a local facility to be retained for the community in the short term [four years]. With any available grant funding and resources, the proposed Tenant will be able to further promote and invest in the building to improve its services to the [BAME] community.

4.7 This disposal is not considered to constitute state aid but may be regarded as a subsidy under the Subsidy Control Act 2022. However, it may have exemption if any assistance is within the statutory limits.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 There is not considered to be any material implications or changes on resources as the status quo is being maintained with some reduction of costs to the Council.

5.2 The Council is currently responsible for property costs and will remain so until completion of the lease when subsequently the Council's property expense and obligations will reduce as more responsibilities are passed to the Tenant.

5.3 The Tenant will be paying a nominal rental of £1,200 pa during the lease term. The Council would, if the property were in a fully repaired condition, be foregoing an estimated rental income of £76,800 pa in respect of Fairfield House and £16,800 pa in respect of 27 Burleigh Gardens.

5.4 Offering a lease continues the current occupation and provides the CIC with the opportunity to further develop and finalise their plans under a short-term lease to demonstrate a stand-alone position to properly take up and deliver from the property.

5.5 A valuation has been commissioned which opinion is that the open market value is £1,300,000 and the restricted value subject to a lease on the proposed terms is £1,000,000. The CIC group will need to demonstrate a social value to benefit from a CAT of considerable equivalent value, an annual value of £92,400 or a capital value of £300,000.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

7 CLIMATE CHANGE

7.1 The lease will enable a local facility to be retained for the community in the short term [4 years]. With any available grant funding and resources, the proposed Tenant will be able to further promote and invest in the building to improve its energy efficiency and sustainability credentials.

7.2 The property has two EPC's. The EPC for Fairfield House is E with an expiry date of 08.12.2029. The EPC for 27 Burleigh Gardens is E with an expiry date of 25.03.2030. There may be an issue with the EPC for Fairfield House as it is noted there is a gas fired boiler when it is oil fired. This may result in a reduced EPC [fail] which will require the works to be undertaken by the Council to bring it back to the E minimum rating. The FFH CIC should be working on proposals to bring both properties to a minimum C or above.

7.3 It should be noted that the current government has proposals to legislate for minimum EPC ratings for lettings of C for 2027 and B for 2030. This does impose some pressure on the Council and in particular the CIC to improve the EPC rating by way of grant funding. Without the grant funding the council would have to explore a disposal with vacant possession in the event it could not fund the works itself.

8 OTHER OPTIONS CONSIDERED

8.1 Other options are currently limited due to the occupation/proposal and condition of the property. A primary option would be an outright sale of the property or as two separate properties on the open market. Alternatively a use by a council service. However, this property is a valued local community facility, and it is therefore considered that a CAT should be explored as a preferred option. A robust business case has been submitted by the FFH CIC which is compatible with council policy, financial and legal frameworks. This will be subject to review before any longer-term lease is to be entered into.

8.2 However, it must be considered a realistic option to dispose of the property on the open market in the event the CIC is not able or viable to take over the responsibilities for the property under a CAT. In the absence of the viable CAT or where responsibilities and liabilities for the property remain with the Council then a sale may become the economic option.

8.3 The grant of the new lease enables the community to retain a facility and community centre resource for the short term with a view, dependent on the Tenant working up to and planning a sustainable operation, to transfer to a longer-term lease opportunity by way of Community Asset Transfer.

9 CONSULTATION

9.1 Consultation has been carried out with the Chief Operating Officer, S151 and Monitoring Officer, as well as the Deputy Leader and Cabinet Member for

Economic and Cultural Sustainable Development and the Ward Councillors for Newbridge.

Contact person	Richard Holden Head of Corporate Estates & Development
Background papers	<ol style="list-style-type: none">1. RICS Guidance Disposal of Land at less than best Consideration. https://democracy.bathnes.gov.uk/documents/s34180/Appx%201%20RICS%20Local%20Authority%20Asset%20Management%20Best%20Practice%2007%20Disposal%20of%20Land%20at%20less%20than%20Bes.pdf2. Community Asset Transfer Policy https://www.bathnes.gov.uk/sites/default/files/final_cat_policy_march_2020_-_updated_with_new_corporate_strategy_2020-24_2.pdf
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