

Garrick Theatre

Report of the Cabinet Member for Leisure, Parks & Waste, Cllr R Cox

Date: 13 April 2021
Agenda Item: 5
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Key Decision? YES
Local Ward Members: All Members

Lichfield
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Cabinet

1. Executive Summary

- 1.1 The Council's agreement with the Lichfield Garrick Theatre Ltd (the Garrick Trust) for the management of the Lichfield Garrick Theatre expired on 31 March 2021. The Garrick Trust's lease on the premises runs to 31 January 2029.
- 1.2 In 2019 the previous Strategic Partnership Agreement was replaced with a Concessionary Services Agreement (CSA) to allow the Garrick Trust to recover VAT and therefore improve their financial position. The CSA is limited to 2 years to remain beneath the procurement threshold.
- 1.3 This report outlines the options to replace the CSA.

2. Recommendations

That Cabinet:

- 2.1 Approve that relationship with the Lichfield Garrick Theatre Ltd revert to a Strategic Partnership Agreement.
- 2.2 Approve funding of the Strategic Partnership Agreement to the values outlined in paragraph 3.13.
- 2.3 Approve the Strategic Partnership Agreement detail a smaller number of more measureable outcomes, to better assess the contribution to LDC's Strategic Objectives.
- 2.4 Gives delegated authority to the Cabinet Member for Leisure, Parks & Waste, in conjunction with the Head of Operational Services to enter into a Strategic Partnership Agreement with the Garrick Theatre Limited on the basis of the principles outlined in this report.

3. Background

Spin-out, tenancy and operating agreements

- 3.1 The Garrick Theatre was established in 2003 and operated by Lichfield District Council. In 2011, Cabinet and Council agreed that the operation of the theatre be transferred to a newly established limited company with charitable status – the Lichfield Garrick Theatre Ltd.
- 3.2 In January 2013 Cabinet granted the Trust a 16-year lease on the theatre running from 1 February 2013 to 31 January 2029. The rent was set at a peppercorn per annum. As part of the recent review of the arrangements, it has been challenged whether such a long-term lease, granted at less than best consideration, with the retention of substantial landlord responsibilities represents good value for LDC.

- 3.3 Initially the relationship was governed by a Strategic Partnership Agreement, which was granted along with the lease in 2013 and ran to April 2016. Such a grant funding agreement falls outside the scope of procurement rules.
- 3.4 A VAT Cultural Exemption review initiated by the Lichfield Garrick Theatre in early 2017 indicated that application of the exemption would provide a financial benefit to the Trust. The financial benefit would be maximised if payments from the Council were based on a supply of services rather than being a grant payment. Therefore a concessionary services agreement (CSA) was implemented with VAT added to the consideration paid by the Council to the Lichfield Garrick Theatre. The value of a 2-year concession agreement would be below the procurement threshold for such agreements.
- 3.5 Cabinet 7 November 2017 agreed to enter into a 2-year CSA for the Trust to manage the Lichfield Garrick Theatre. Following further discussions between the Council and the Trust, Cabinet 12 February 2019 set the 2 year period as 1 April 2019 to 31 March 2021.
- 3.6 Despite the granting of a lease to 2029, the agreements to operate the theatre on the Council's behalf have been of a shorter duration. This presents an incoherence in approach, giving neither the Council nor the Trust surety of operation, whilst the lengthy tenancy makes alternative arrangements effectively impossible.

Value of support

- 3.7 Benchmarking with the Theatres' Trust, the national advisory public body for theatres, has indicated that theatres of the size of Lichfield Garrick are unlikely to be able to operate without some local authority subsidy. Furthermore Covid-19 has had a profound impact on the performing arts industry. Required to close in all three national lockdowns, most theatres have effectively not traded since early March 2020. Furthermore, without a clear exit path from Covid-19 restrictions, theatres and performing arts venues are struggling to assemble programmes for 2021.
- 3.8 The Trust were however successful in securing £279,446 from the Government's Culture Recovery Fund administered by Arts Council England. A further round of funding was announced in December 2020 to support organisations to transition to re-opening and applications are currently being assessed. It is understood that the Trust have made an application to this round also.
- 3.9 The value of the current CSA is £250,000 a year. Although substantially less than the initial grant of £663,200 in 2012/14, this remains a significant cost for a discretionary service. Recent benchmarking indicated that LDC's Culture and Heritage spend (principally the Garrick Theatre grant) was 23% higher than the average of Lichfield's statistical neighbours – placing LDC in the top quartile for spend.
- 3.10 The budget consultation exercise conducted between 22 October 2020 and 31 December 2020, ranked the Garrick Theatre 13th out of 14 spending areas and one of only 2 areas where the majority of residents were in favour of reduced spending. The longer term affordability of the grant must be considered alongside the longer term management arrangements.

Longer-term settlement

- 3.11 A longer-term agreement – co-terminus with the lease – will resolve the current incoherence. It will also provide both parties with greater clarity to plan.
- 3.12 The approved Medium Term Financial Strategy (MTFS) assumes annual payments to the Garrick of £250,000 up to 2024/25 and the longer term financial model from 2025/26 onwards also assumes this annual level of funding.
- 3.13 The Leader of the Council, in negotiation with the chair of the Theatre Trustees has outlined the basis of an eight-year agreement. This would see LDC taper its funding to the Trust as follows:
- 2021/22: £250,000

- 2022/23: £210,000
- 2023/24: £150,000
- 2024/25 – £100,000
- 2025/26 – 2028/29: £75,000 per annum

- 3.14 Over the period of the current MTFS (to 2024/25), this represents a saving of £290,000. This would however commit LDC to funding of £300,000 over the period 2025/26 – 2028/29. £75,000 is considered the steady-state funding level for the Trust to secure ongoing theatre operations.
- 3.15 This funding profile reflects the Trust’s aspiration to continue to meet more of their operating costs from income generation. This increased income generation has already seen the Trust’s reliance on LDC funding drop by more than £400,000 per year since it was established. It is also worth noting that the £300,000 commitment over the period 2025/26 – 2028/29 is considerably less than the £1,000,000 that would be required if the current funding level was retained.

Form of agreement

- 3.16 Legal advice identified 4 potential options for a future agreement with the Garrick Trust to support the operation of the theatre. These are discussed in greater detail in section 4. A summary table of the options is presented as Appendix 1. A copy of the legal advice is included in Appendix 2 and the VAT advice in Appendix 3.
- 3.17 It is recommended that the funding relationship with the Garrick Trust revert to a **Strategic Partnership Agreement**. This solution is able to be co-terminus with the lease to 2029, compliant with procurement legislation, is straightforward to enact, allows the Council continued influence over outcomes and does not require amendment to the lease.
- 3.18 Funding in the format of a grant agreement cannot be considered taxable supply and as such there would be no VAT element to the payment for the Trust to recover, reducing the funding available to the Trust.
- 3.19 The other options available are outlined in the alternative options section below. Each of the other options presents significant risk to LDC and / or continued theatre provision.

Strategic Partnership Agreement

- 3.20 Reverting to a Strategic Partnership agreement, to be in place for upto 8 years, presents an opportunity for LDC to restate the outputs sought from the Garrick Theatre.
- 3.21 The previous Strategic Partnership Agreement required the Garrick Trust to:
- be a proactive partner in helping the Council to develop the cultural, economic and social benefits of the visitor economy, help to position the district as a premier destination for culture and heritage and to develop the cultural contribution in the district to improve the quality of life and well-being of our communities;
 - play a vital part in the life of the local community in Lichfield district - working with the local community and other arts organisation in the district, striving to collaborate and working in partnership with other bodies in the district, county and beyond on projects on a year by year basis;
 - take an active role in relation to the economic impact the Theatre has on the city centre to boost business and create jobs, within a need for a vibrant prosperous economy in Lichfield district;

- provide a varied programme of performing arts including drama, dance, music, film, and conference opportunities for business, which continue to develop the Theatre's local and national reputation, and is responsive to customer demand and reflects a well-run business;
- develop audiences for the future as part of building a sustainable business, pushing at artistic boundaries, with innovation and creativity in the artistic endeavour;
- provide outreach work to the local community across the district, initiate education and community projects working with schools, voluntary groups and societies, encouraging young people to be involved in the life of the Theatre through for example the Young Rep, the Youth Theatre, and the holiday workshops, and reaching older groups who would benefit from active engagement in cultural activity, and reaching all abilities;
- collaborate with higher and further educational organisations, including Staffordshire University and South Staffordshire College, building on the development of the BTEC Performing Arts course with the College;

3.22 And that the Trustees will:

- be at the heart of the arts and cultural community as well as the business community in the district;
- bring about the financial benefits of the charitable status of the Theatre to the district, including attracting funds from other public sector bodies;
- develop a strategy to attract corporate sponsors, able to give charitable donations to the benefit of the Theatre and pursuit of the shared objectives;
- develop a strategy so that individual donors, linked to gift aid, can contribute to the development of the Theatre;
- maximise box office income from performing arts and conferences;
- maximise secondary income, including merchandising, bar and catering trading income;
- achieve best value in the Theatre's expenditure and commissioning, ensuring a sound business operation, for the venue as a whole, including the 2 performance spaces, bars, catering and merchandising;
- ensure that the business is well regulated and operates to acceptable standards of probity and business practice;
- is a good employer, with sound practices worthy of a charitable organisation;
- develop 3 year business plans which achieve the Trust's charitable objectives, based on decisions in relation to 'public benefit' which are made by the Trust as an independent organisation, and which include the shared objectives agreed with the Council;
- further develop the Friends of the Theatre organisation to reinforce and widen the community's engagement with the Theatre;
- ensure that the Theatre complies with the conditions of the European Regional Development Fund;
- provide and share information to enable the ongoing monitoring and review of delivery, working openly together in a spirit of cooperation and 'give and take' towards shared agreed goals

- 3.23 The objectives as currently stated do not reflect good practice from a service agreement perspective. They would appear too numerous to provide meaningful focus and direction, they lack specificity and means of performance measurement.
- 3.24 A more focused set of straightforward measurable key performance indicators (KPIs), will enable a clearer understanding of the Theatre’s performance and contribution to the Council’s Strategic Objectives. Suggested KPIs that can be baselined and reported on include:
- Number of tickets sold
 - Participation – number of unique customers
 - Audience demographics (age, gender, race)
 - Home postcode of audience
 - Hours of discounted facility provision to Lichfield-based community arts organisations
- 3.25 The KPIs need not be an exclusive list of all that the Trust will report on, but could be considered a base level of data to be shared on a regular basis.

Alternative Options	<p>4.1 The lease with ancillary services is considered a “novel” approach. This option was explored as a potential opportunity to fund a compliant means of continuing taxable supply to the Trust so they may continue to benefit from VAT reclaim.</p> <p>4.1.1 However legal and tax advice has indicated it will be extremely difficult to draft a lease that achieves procurement compliance in a format that can be considered taxable supply.</p> <p>4.2 Advice is that the Concessionary Services Agreement could now be extended by a further year. The impact of Covid on the theatre industry means the Trust effectively lost a year of operation and benefit from the CSA.</p> <p>4.2.1 However the CSA would only be compliant for a maximum of 12 months and would therefore not provide the long-term solution sought.</p> <p>4.3 If LDC were to terminate the lease and retender for a theatre operator would allow a longer-term CSA to be entered into to secure VAT recovery. The formal market testing would avoid any procurement risk.</p> <p>4.3.1 LDC cannot determine the lease prematurely, therefore this option would be contingent on the Trust voluntarily surrendering the lease. Moreover, given the damage to the theatre industry from Covid restrictions, attempting to procure a theatre provider now could lead to a failure to appoint an operator or appointing an operator on worse terms than the current.</p> <p>4.4 LDC could cease to fund the operation of the theatre at the end of the current CSA. A cliff-edge ceasing of support would be extremely difficult for the Trust to manage, especially given the very challenging state of the theatre industry. This would present a very significant risk to the ongoing operation of the theatre and a substantial PR risk to LDC.</p>

Consultation	<p>South Staffordshire Legal Services Veale Wasbrough Vizards LLP PWC for VAT advice</p>
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Financial Implications	Outlined in the report.
Contribution to the Delivery of the Strategic Plan	The provision of a theatre in Lichfield contributes to: <ul style="list-style-type: none"> a. Enabling people – to live healthy and active lives. b. Developing prosperity – to enhance the district for visitors; benefit to City-Centre night-time economy
Equality, Diversity and Human Rights Implications	Reverting to a Strategic Partnership Agreement would allow LDC to re-state our aspirations in terms of outputs. There should be no adverse impacts as a consequence of this change.
Crime & Safety Issues	None at this time.
Environmental Impact	None
GDPR/Privacy Impact Assessment	Not required.

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Lichfield Garrick Theatre Ltd cease to trade	<ul style="list-style-type: none"> • Ongoing liaison • Continued longer term grant payment 	Likelihood: Green Impact: Yellow Severity of Risk: Green

<p>Background documents</p> <p>Appendix 1 – Option summary</p> <p>Appendix 2 - Legal advice (VWV) - CONFIDENTIAL</p> <p>Appendix 3 – VAT advice (PwC) - CONFIDENTIAL</p> <p>Medium Term Financial Strategy (Revenue and Capital) 2020-2025 – Council 16 February 2021.</p>

<p>Relevant web links</p> <p>None</p>
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Appendix 1 – option summary

		Term	LDC control	Procurement compliance	VAT recovery	Implementation	Funding
a	Lease with ancillary services	Variable	Reduced	Risk of challenge (low)	Possible	Negotiation	Negotiate saving
b	Short term extension of the concession agreement	1-year	Continued	Compliant	Yes	LDC control	Saving
c	Grant agreement (Strategic Partnership Agreement)	Variable	Continued	Compliant	No	LDC control	Saving
d	Terminate lease and tender for a theatre operator	Variable	Continued	Compliant	Yes	Would require Trust to surrender lease.	Risk of increased cost