

Title of meeting: Culture and City Development Meeting

Date of meeting: 20 March 2020

Subject: Groundlings Theatre

Report by: Director of Culture, Leisure and Regulatory Services

Wards affected: Charles Dickens

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 To outline to the Cabinet Member a proposal for a Revenue Grant payment to Groundlings Theatre for the financial year 2020/21.

2. Recommendations

- 2.1 That a grant of £15,000 be proposed to the Groundlings Theatre Trust (CIO) and a Loan Facility Agreement of approximately £36,000 (including £6,230 previously provided) be proposed to Mr Richard Hurdle (Stride) which will be subject to:
- i) entering into a detailed Grant Agreement (incorporating a Service Level Agreement) with associated performance criteria;
 - ii) a "clawback" arrangement being in force for 36 months which stipulates that should the CIO not meet the performance requirements of the Grant Agreement , then the grant is repayable;
 - iii) a separate Loan Facility Agreement being entered into with Mr Richard Hurdle (Stride) (subject to interest) for the sum equal to the outstanding sum required to discharge the existing loan secured on the Groundlings Theatre property. The sum advanced is to be used to discharge the existing loan secured on the property. Depending upon the most appropriate basis of advancement of the loan facility it could be either payable to Mr Richard Hurdle (Stride) direct or via Portsmouth City Council direct to the current mortgage holder on behalf of Mr Richard Hurdle (Stride) the proviso being that the current legal owner of the premises Mr Richard Hurdle (Stride) has agreed and provided in escrow an appropriate legal charge securing both the loan facility and grant agreement in advance.

iv) that the emergency financial assistance previously provided in the sum of £6,230 is included within the Loan Facility Agreement described in recommendation iii) above;

v) a first legal charge on the property is obtained in favour of the Council for the sums due under the Grant Agreement and the Loan Facility Agreement set out in recommendation iii) and iv) above for the sum advanced to the CIO and Mr Hurdle (Stride).

2.2 That delegated authority is given to the City Solicitor in consultation with the S.151 Officer to conclude the terms of the Loan Facility Agreement and to complete all other necessary legal documentation to put these recommendations into effect.

2.2 It be noted that that the grant award is subject to the approval of funding and criteria agreed by the S151 Officer as set out in the Council's constitution (Financial Rules).

3. Background

3.1 Groundings Theatre is a theatre and drama school based within the Old Beneficial Centre - a Grade II* listed heritage building in Portsmouth affectionately known as 'Old Benny'. Built by the Portsea Beneficial Society in 1784 with the aim of schooling the poor of Portsea, the building housed one of the first free schools in the UK, with female pupils making up 1/3 of the 300 strong school population by 1837. Throughout its time, the upstairs of the building remained a theatre and hosted Queen Victoria on at least two occasions.

3.2 In 2010, Groundlings Theatre, a private company owned by an individual, leased the building from a 'business angel' who bought the property from the Council when it was added it to the disposal list of properties as surplus to requirements.

3.3 The ownership of the building changed again and Mr Richard Hurdle (Stride) is now the legal owner of the building and also of the wardrobe asset. A new company, Groundlings Theatre Limited, was incorporated as a company limited by guarantee in February 2014 to run the Theatre. The Groundlings Theatre Trust - a Charitable Incorporated Organisation (CIO), a relatively new legal form for a charity (Registration 1186929), was established in December 2019 to run the Theatre and the current Trustees are: (1) Daniel Jeffries, (2) Helen Gibbs and (3) Kathryn Swarbrick. Their stated charitable objectives are:

The advancement of the performing arts, in particular the art of drama, in the city of Portsmouth and neighbouring districts by the public benefit by:

A: Educating the public and growing public understanding and appreciation of the performing arts through the delivery of arts events and performances

B: Providing opportunities for participating in the performing arts including the production of arts events and performances, particularly but not exclusively by young people.

- 3.4 The current structure of the building enables a theatre format to be offered in the auditorium for seating between 168 seats and 123 seats depending on the production and space requirements but the auditorium remains inaccessible to wheelchair users as there is no lift in the building.
- 3.6 The CIO does provide a range of theatre options in a ward where access to opportunities for young people can be limited due especially to financial constraints. They have built a good reputation with the immediate local community some of whom participate in the activities and opportunities their programme provides.
- 3.7 Mr Richard Hurdle (Stride), the owner of the building and also a director of Groundlings Theatre Limited, approached the Council in March 2019 seeking an emergency loan in order to provide him with some emergency financial assistance to avoid the Theatre building being taken out of community use and Groundlings Theatre Limited being wound up. Cash-flow support of £3,000 was agreed by the Section 151 Officer in order to enable the Theatre to continue to operate and remain open and allow time to carry out a review of their financial circumstances. The Council also provided temporary cash-flow support of £3,230 during 2019 to enable Groundlings Theatre Limited to continue operating and to avoid the loss of the building (in the event that the owner of the property was unable to meet the liabilities from his personal funds) and Theatre to the community.
- 3.8 As a result of this review, it was clear that a financial re-structuring of the organisation, which was running the Theatre, was required and the Groundlings Theatre also recognised that it needed to deliver a number of changes to both its legal structure and its operating Board. Accordingly, the establishment of the CIO was a critical part of this requirement and a condition of the emergency financial assistance provided.
- 3.9 Throughout the work between the Council and the Groundlings Theatre Limited, it was envisaged that re-structuring the finances would involve a cash injection from the company and building owner and that this would take place following the sale of some development land (with substantial value) on the site. The proprietor committed to making the necessary financial injection into the Theatre, making good the liabilities that he had entered into under his ownership.
- 3.10 The Council's role in supporting the Theatre was to assist in facilitating the transition to a more sustainable organisation through both its legal structure and operating model as well as any temporary "bridging" financial support that was required to place the new organisation on a firm footing and to prevent the building being repossessed at the time. Beyond this, any grant funding would be based on supporting the delivery of the Council's strategic objectives for the delivery and advancement of performing arts in the City and any loan provided to Mr Richard Hurdle (Stride) would be used for of the existing loan secured against the building and thus protecting the building from being repossessed.

- 3.11 It is proposed to offer The Groundlings Theatre Trust (CIO) a grant of £15,000 in revenue funding which, as with all grants, will be linked to a detailed Service Level Agreement in order to ensure effective monitoring of the delivery of the business and the proper application of the grant. In addition, it is proposed to offer Mr Richard Hurdle (Stride) a loan facility of approximately £36,000 (including £6,230 previously provided) which will be used to discharge the existing loan currently outstanding and secured against the building.
- 3.12 In order to secure the Building for the Theatre to operate from, it is necessary to enter into the Grant Agreement with The Groundlings Theatre Trust (CIO) and the Loan Facility Agreement with Mr Richard Hurdle (Stride) as described above as well as discharging an existing loan secured on the property. Without discharging the loan, there is a material risk that the loan company could force a sale because loan repayments are not able to be made.
- 3.13 To secure the property and recognising the previous financial commitment made by the proprietor of the building and Groundlings Theatre Limited, it is proposed that the Council provides a Loan Facility Agreement to be secured by the owner of the building by way of a first legal charge over the Groundlings Theatre with the sums provided through the Loan Facility Agreement to be used to discharge the existing loan. It is further recommended that the emergency assistance loans totalling £6,230 previously provided by the Council be added to the Loan Facility Agreement. This provides the opportunity for the Theatre to remain a productive community asset into the future. The intention is to enable the CIO and the legal owner to be in a position in the short term to trade appropriately and be in a position to repay the loan facility.
- 3.15 The terms of the Loan Facility Agreement with Mr Hurdle (Stride) will need to be agreed by the City Solicitor in consultation with the S.151 Officer, the main terms being as follows:
- 3.15.1 Interest will be payable at a rate agreed by the delegated officers;
 - 3.15.2 The loan will be repayable on demand by the Council or the sale of the building (or part);
 - 3.15.3 The loan will be secured against the property as the first and only legal charge;
 - 3.15.4
- 3.16 In addition, to provide some additional assurance that the Groundlings Theatre will provide future community benefits and recognising its dependency on the availability of the building, it is proposed that the proposed grant of £15,000 is conditional upon the discharge of the existing loan and also that the grant itself is subject to "clawback arrangements" for a 36 month period should the performance requirements within the Grant Agreement not be delivered.
- 3.17 The Grant Agreement monitoring will build on the review of the business's financial arrangements and processes, which has been undertaken by the council's Financial Services team. This will require The Groundlings Theatre

Trust to provide the Council with information to ensure that the agreed Grant Agreement is being met.

- 3.18 Finance officers also anticipate attending Board meetings as observers in order to have full sight of the operational details of the CIO and to ensure that the business continues to address the recent issues it has experienced.

4. Reasons for recommendations

- 4.1 The geographical location of this theatre in the heart of Portsea means that it is well placed to support access to creative opportunities especially for young people where financial constraints can be a limiting factor. There is an opportunity to expand the offer across wider communities so more people can benefit once the new CIO is more firmly established.

5. Integrated impact assessment

- 5.1 Attached at appendix 1.

6. Legal implications

- 6.1 The Council under section 145 of the Local Government Act 1972 has the power to contribute towards the expenses of the doing of, anything (whether inside or outside the Council's area) necessary or expedient for:-

- a) the provision of an entertainment of any nature or of facilities for dancing;
- b) the provision of a theatre, concert hall, dance hall or other premises suitable for the giving of entertainments or the holding of dances;
- c) the development and improvement of the knowledge, understanding and practice of the arts and the crafts which serve the arts;
- d) any purpose incidental to the matters aforesaid, including the provision of refreshments or programmes and the advertising of any entertainment given or dance or exhibition of arts or crafts held by them.

- 6.2 Providing a grant funding of £15,000 to the CIO which was established just over 2 months ago presents a significant risk. It is understood that the CIO does not have any assets or other property. All the assets (including the property) necessary for the running of a theatre are owned by Groundlings Theatre Limited and Mr Richard Stride (otherwise known as Richard Hurdle) personally. In the event of the CIO breaching the terms of the Grant Agreement and the Loan Facility Agreement, the Council would have difficulties reclaiming any of the grant/loan funding unless the necessary security is obtained against the main asset owned by an individual, that being Mr Richard Stride / Hurdle.

- 6.3 As the provision of £15,000 grant funding and an additional loan facility of approximately £30,000 to the CIO could potentially be unlawful *State Aid* the Council needs to be satisfied that it would be able to re-claim the money if it was deemed by a competent authority, whether national or European, that funding was

unlawful *State Aid*. Whilst a remote consideration, it is a risk that can be mitigated against as suggested.

6.4 In so far as there is a perception that there is a loan to Mr Stride / Hurdle, the reality is that the funding will be payable by way of PCC direct to the current mortgage holder with Mr Stride /Hurdle having given legal security effected upon his own legal premise (the theatre building) to indemnify failed performance re: the grant advance and provide interim security re: the loan facility, the intention being that such advance by way of loan be rationalised by Mr Hurdle /Stride and the CIO as they trade through the current difficulty. The Legal basis for what is in effect a short term investment (given that there is interest payable) is section 12 Local Government Act 2003.

6.5 Section 12 of the Local Government Act 2003 gives the Council the power to invest:

- (a) for any purpose relevant to its functions under any enactment, or
- (b) for the purposes of the prudent management of its financial affairs.

6.6 Section 12 makes clear that the Council has the power to invest, not only for any purpose relevant to its functions but also for the purpose of the prudential management of their financial affairs. This includes the power to make loans to local enterprises and local charities as part of a wider strategy for local economic growth even though those loans may not all be seen as prudent if adopting a narrow definition of prioritising security and liquidity. However, when making such investments, the Council has to have regard to any guidance issued by the Secretary of State.

6.5 In addition, under section 1 of the Localism Act 2011 (general power of competence), the Council has power to do anything that individuals generally may do unless prohibited by law. The Council would be relying on the general power of competence as an adjunct to the above power to invest to the CIO with Mr Hurdle/Stride providing a direct security to indemnify the CIO in terms of grant facility and loan facility.

7. Director of Finance's comments

7.1 Funding for the proposed loan and grant will be met by a release from the Leader's Portfolio reserve subject to approval by the S151 Officer

7.2 This is a new grant/ facilitation to a newly established organisation and the grant award will be subject to the usual conditions set out in the Council's Constitution (Financial Rules). This includes that:

- The grant is awarded in accordance with specified criteria approved by the S151 Officer
- The grant is used in the way intended
- There is a management trail to support the application and payment made

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Signed by:

Stephen Baily

Director of Culture, Leisure and Regulatory Services

Appendices:

Appendix A: Integrated Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by:

Cabinet Member for Culture and City Development