

CABINET - 6TH JULY 2017

Report of the Strategic Director of Corporate Services

Lead Member: Councillor Barkley

Part A

ITEM FEARON HALL – PROPOSED TRIPARTITE LEASE AGREEMENT

Purpose of Report

This report recommends that the Council enter into a tripartite agreement with the Parochial Church Council (PCC) and Fearon Hall Community Association (FHCA) that will cover the matters of required repairs to Fearon Hall, satisfaction of existing lease obligations and future lease arrangements, and facilitate the ongoing ability of FHCA to operate as a sustainable community group.

The PCC and the Council as respectively landlord and lessee, have been in longstanding dispute over the responsibility for repair works required at Fearon Hall. The Hall is currently occupied by the FHCA which has, since the inception of the head lease, been the sub-lessee of the building.

Recommendations

1. That the Council undertakes repair works to the Fearon Hall building in accordance with professionally completed surveys to ensure that:
 - identified walls are underpinned to prevent future movement
 - the building is made 'wind and watertight'
 - electrical and fire safety systems meet required safety standards.
2. That funding of £250,000 for these works is allocated from the Capital Plan Reserve.
3. That delegated authority is given to the Strategic Director of Corporate Services, in consultation with the Lead Member, to enter into the tripartite agreement and make other arrangements as may be necessary to complete the works and finalise future lease arrangements.

Reasons

1. To meet the Council's obligations as set out in the tripartite agreement.
2. To ensure funding for the repair works is available.
3. To facilitate the efficient and timely completion of the repair works and future lease arrangements.

Policy Justification and Previous Decisions

The Council has a legal obligation to undertake repair works under the terms of the existing lease.

The tripartite agreement also enables FHCA to enhance its security of tenure. This is in line with the 'Every Resident Matters' theme within the 2016 – 2020 Corporate Plan which specifically states that the Council will support its three community hubs, one being FHCA.

Implementation Timetable including Future Decisions and Scrutiny

If agreed by Cabinet it is intended that repairs to the building will start as soon as possible with a view to completing external works by the end of the calendar year.

Report Implications

The following implications have been identified for this report.

Financial Implications

The cost of the repair works falling on the Council is estimated at £250,000. This will be treated as capital expenditure and the cost will be funded from the Capital Plan Reserve.

Risk Management

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

<i>Risk Identified</i>	<i>Likelihood</i>	<i>Impact</i>	<i>Risk Management Actions Planned</i>
That FHCA is unable to continue as a viable community group. This may then enable the PCC to sell a newly repaired building and unfairly financially benefit from the Council's funding of repair works	Possible	Moderate	If report recommendations are agreed the future prospects of FHCA are significantly enhanced A 'clawback' clause has been included within the tripartite agreement such that the Council can recoup some of its repair costs if the building is sold within five years of the repairs being completed.

Key Decision:

Yes

Background Papers:

- Specification for works – Underpinning
- Specification for works – 'Wind and watertight'

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Part B

Background

Context

1. Fearon Hall is a building with historical interest and an example of Victorian brick architecture. Built in 1889 and extended in 1910 in memory of the Archdeacon Henry Fearon (principally remembered for bringing clean water to Loughborough), it served originally as a Parochial Sunday School and entertainment venue. It is situated in a conservation area adjacent to Loughborough ('All Saints') Parochial Church.
2. A leasing arrangement signed in May 1981, but backdated to January 1980 (when it is assumed occupation by the Community Association began), saw the Council leasing the Hall for a period of 28 years (to 2008) at a peppercorn rent from the Church (formally, the Parochial Church Council) and the Council then sub-letting the building to the Community Association, also at peppercorn rent, over the same period. Although in a position of head lessee, it is of note that the Council has never occupied the Hall.
3. The Hall is currently in a poor state of repair and suffers from fundamental structural deficiencies, principally relating to unstable foundations under the north-western corner of the building and lack of integrity within areas of the roof, windows and walls resulting in the building not being watertight. Internally, much work is also required to upgrade safety systems, refurbish kitchen and bathroom areas and generally redecorate
4. The responsibility for undertaking the key external repairs has been a matter of dispute between the Parochial Church Council (PCC) and Council for a number of years due to the ambiguous drafting of the original leases. As a result the leases have been 'held over' since their expiration in 2008 and all parties are still bound by the original terms.
5. Internal repairs are the responsibility of the Fearon Hall Community Association (FHCA) but lack of available funding has severely limited its ability to carry out the required repairs and upgrades to the building. In practice the Council has undertaken and funded repair works on an ad-hoc basis.

Fearon Hall Community Association

6. Fearon Hall Community Association was formed in December 1979 and with the support of Charnwood Borough Council leased Fearon Hall from Loughborough Parish Church (strictly, the PCC) for the benefit of the local community. The Hall is situated in East Loughborough (Leymyngton Ward), an area identified as having particularly high levels of deprivation and need. It is within one of the Council's designated priority neighbourhoods.

7. Since formation of FHCA, the Hall has been a focal point for local community services and activities, managed by Trustees of the charity which formed on 3 November 1980 and a small core of staff. Subsequently, on 19 March 2009 the organisation registered as a Charity Limited by Guarantee and appointed Directors and a Company Secretary to consolidate the legal status of the Association for the future.
8. Key personnel associated with FHCA have inevitably changed over the years but latterly the Association has been re-energised with the appointment of new trustees and a new manager combined with the appointment of a new Rector at Loughborough All Saints Parish Church.
9. FHCA is a long-standing Strategic Partner of the Council. Recent changes in personnel at FHCA, outlined above, have addressed previous concerns raised around the capacity of the Community Association to justify ongoing Council support through the Community Grants programme and deliver appropriate levels of services to the local community. Assuming that key repairs are carried out and security of tenure is achieved through the tripartite agreement, Council officers are now cautiously optimistic about the future viability of FHCA which, inter alia, will now be much better placed to access grant funding.
10. In summary, FHCA remains a valued strategic partner of the Council. Members may therefore wish to consider their decision in respect of this report in the context of the wider strategic partnership.

Extant leases

11. The Council has taken legal advice in respect of its obligations under the existing leases. These comprise the head lease between the PCC and the Council, and the sub-lease, between the Council and FHCA, both of which are dated 19th May 1981 and cover the occupation of Fearon Hall from 1st January 1980 for a period of 28 years. The lease period expired on 1st January 2008 since which period the leases have been 'held over'. This is normal practice in this type of situation.
12. Under the leases the Council's obligations are (as far as relate to the condition of the building) to keep the building 'wind and watertight' and to keep the premises 'reasonably functional' as a community centre'. This wording is ambiguous, particularly in respect of subsidence issues causing the building to move, which would typically be regarded as the responsibility of the landlord. In summary, the legal advice was:
 - There was no doubt that the lease wording is ambiguous and in the event of any formal mediation or legal action there could be no guarantee that matters would be resolved in the Council's favour
 - Formal mediation could result in total legal costs incurred by both parties of well in excess of £100,000.

13. Given the outline repair costs were estimated to be in the order of £200,000 a negotiated solution between the Council and PCC was therefore much preferable to a formal process.

Cost of principal repairs required to the Hall

14. Professional surveys have been carried out to assess the extent of works required at Fearon Hall. Subsequently, the Council has tendered for key elements of these works in an exercise that concluded in May 2017. Contracts have been awarded in line with the Council's procurement rules subject to receipt of Cabinet approval of the recommendations of this report.

15. Total repair costs are projected as follows:

<i>Description</i>	<i>£000</i>	<i>Comments</i>
Drainage	20	Will satisfy repair obligations under lease Estimated amount To be procured through Council framework contract
Underpinning	85	Will satisfy repair obligations under lease Amount based on tender price
'Wind & watertight' works	55	Will satisfy repair obligations under lease Amount based on tender price
Electrical and fire safety systems	40	Requested by FHCA to ensure Hall can be occupied safely Estimated amount
Sub-total	200	
Contingency @ 25%	50	A 25% contingency is deemed appropriate due to the age of the building lack of maintenance in recent years, and the nature of works required
Total projected costs	250	

16. It is envisaged that additional verbal clarification on costs will be available at the date of the Cabinet meeting.

Proposed tripartite agreement

17. The proposed Heads of Terms for the draft tripartite agreement is set out at Appendix A. The key features of this agreement are:

- The Council will procure and pay for required repair works as outlined above, and ensure that they are completed to the required standard
- The Council will surrender its lease (the head lease); both the Head Lessor (the PCC) and Head Lessee (the Council) will make no claims for dilapidations or compensation respectively

- Similarly, the FHCA will surrender their lease, with no claims for dilapidations or compensation arising from this action
 - A clawback provision is in place such that if the PCC sell the building within five years of surrender of the head lease, the Council may recover a maximum of £100,000 from the net sale price; the actual recoverable amounts are based on percentages which reduce over time.
18. The key benefits to the Council of this arrangement are that it settles a longstanding dispute, enables an exit from an onerous lease arrangement, and offers the opportunity of stability of tenure for the Community Association in a building which is structurally sound and safe to operate. The terms of the draft lease between the PCC and FHCA are such that operating costs for the FHCA in the initial years of the lease are minimal, enabling them to build up operating resilience and the funds required to maintain the Hall in the medium term.
19. The proposed Heads of Terms for the prospective lease agreement between the PCC and FHCA are set out at Appendix B. The Council are not party to this agreement but members should note that these terms are important in assessing the future sustainability of FHCA. The key features of this agreement are:
- The lease will have an initial three year term at peppercorn rent
 - At the end of this term (or before should it be appropriate) FHCA may exercise an option for a further 25 year term; rents and planned rent increases will be designed on a 'stepped' basis to avoid significant rent rises from year to year
 - Subsequent rent reviews would take place every five years, be upwards only and be indexed to market rents or RPI, whichever is the greater; market rent will reflect the conditions and restrictions in the lease and there will be a provision for the rent to be set by an independent arbitrator if parties fail to agree (giving FHCA protection against a landlord seeking an inappropriate rent increase)
 - A schedule of tenants improvements will be agreed between the PCC and FHCA prior to commencement of the 'further' term; the lessee (ie. FHCA) will also be required to keep the building in good repair
 - The costs of works required by legislation in respect of energy efficiency will be borne by the lessee
 - Some areas of the Hall will be reserved for Church use
20. The effect of these terms is to allow FHCA in initial period of low rents in order that they implement their business plans, access grant funding available once security of tenure is achieved, and build up financial reserves enabling them to become sustainable in future years.

- 21 FHCA have reviewed the prospective lease terms in the context of their business plans and taken legal advice. Feedback from the Community Association is that they are prepared to sign a lease in line with the Heads of Terms set out at Appendix B.

Summary

22. The recommendations set out in Part A of this report allow the Council to accept the solution outlined in the tripartite agreement. This will result in settlement of a longstanding dispute, allow the Council to exit from an onerous lease arrangement, and put the Fearon Hall Community Association in a good position to continue and expand its community work, sustainably, in the medium and longer term.
23. For the avoidance of doubt, Cabinet may note that no liabilities associated with this report will be incurred before until all parties have signed Heads of Terms in respect of both the tripartite agreement and the future lease agreement between the PCC and FHCA.

Appendices

APPENDIX A

- Draft Heads of Terms – tripartite agreement covering repairs to Fearon Hall, cessation of existing lease arrangements and future lease arrangements to be created

APPENDIX B

- Draft Heads of Terms – Prospective lease agreement between the Parochial Church Council and Fearon Hall Community Association

NOTE

These appendices are the latest iteration in draft, and are therefore still subject to change following final agreement amongst all parties. The recommendation in this report seeks delegation for the Strategic Director to finalise these negotiations and documents.

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**DRAFT HEADS OF TERMS
(Subject to Contract/Without Prejudice)**

**PROPOSED TRIPARTITE AGREEMENT
FEARON HALL,
LOUGHBOROUGH, LEICESTERSHIRE**

1. **PARTIES**

Head Lessor: The Parochial Church Council of Loughborough All Saints with Holy Trinity (Managing Trustees) and Leicester Diocesan Board of Finance (Custodian Trustee)

Head Lessor's Solicitors: Latham & Co.
Charnwood House
2 Forest Road
Loughborough
Leicestershire
LE11 3NP

Tel: 01509 238822
Fax: 01509 238833
DX 19614
E-mail: trevorkirkman@lathamlawyers.co.uk
(Ref: Trevor Kirkman)

Head Lessor's Agents: Andrew Granger & Co. Ltd
2 High Street
Loughborough
Leicestershire
LE11 2PY

Tel: 01509 243720
Fax: 01509 218245
E-mail: rupert.harrison@andrewgranger.co.uk
(Ref: Rupert Harrison)

Head Lessee: Charnwood Borough Council
Council Offices
Southfield Road
Loughborough
Leicestershire
LE11 2TX

Tel: 01509 634699
Email: simon.jackson@charnwood.gov.uk
(Ref: Simon Jackson)

DRAFT HEADS OF TERMS
(Subject to Contract/Without Prejudice)
PROPOSED TRIPARTITE AGREEMENT
FEARON HALL, LOUGHBOROUGH, LEICESTERSHIRE



3. **SURRENDER OF LEASE**

Upon satisfactory completion of the above works, the Head Lessee will surrender the Head Lease and will make no claim for compensation against the Head Lessor and the Head Lessor will make no claim for dilapidations.

4. On satisfactory completion of the above works the Sub-Lessee will surrender their existing sub-lease (with no claim for compensation and no counter claim for dilapidation)s.
5. The Head Lessor will grant a new lease direct to the Fearon Community Association Ltd (and the Community Association agrees to accept the lease) on the basis of a new 3 year lease together with an option to take a new 25 year lease in accordance with the revised Heads of Terms for the proposed leases (copy attached).

6. **CLAW-BACK PROVISION**

For a period of 5 years commencing from the date of surrender of the Head Lease, in the event of a sale of the freehold of the property by the Head Lessor, the Head Lessor agrees to repay the following monies to Charnwood Borough Council, namely the stated percentage of the nett sale price achieved for the property (after deduction of sale costs) up to a maximum claw back of the lesser of £100,000 (One Hundred Thousand Pounds) or the following percentage :-

Year 1	40%
Year 2	30%
Year 3	20%
Year 4	10%
Year 5	5%

The claw back arrangement would not apply in the event of a compulsory purchase of the property or an insurance settlement.

7. **CONSENTS**

The above is subject to Cabinet approval from Charnwood Borough Council, Managing and Custodian Trustee consent on the part of the Parochial Church Council/Leicester Diocesan Board of Finance and internal consents on the part of the Community Association.

8. **COSTS**

Each party are to bear their own legal and surveyor's fees incurred in this matter.

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REVISED DRAFT HEADS OF TERMS

Subject to Contract

**FEARON HALL
RECTORY ROAD
LOUGHBOROUGH
LEICESTERSHIRE
LE11 1PL**

1) LESSOR: The Parochial Church Council of Loughborough All Saints with Holy Trinity (Managing Trustees) and Leicester Diocesan Board of Finance (Custodian Trustee)

LESSOR'S SOLICITORS:

Latham & Co.
Charnwood House
2 Forest Road
Loughborough
Leicestershire
LE11 3NP

Tel: 01509 238822
Fax: 01509 238833
DX 19614
E-mail: trevorkirkman@lathamlawyers.co.uk
(Ref: Trevor Kirkman)

LESSOR'S AGENTS:

Andrew Granger & Co. Ltd
2 High Street
Loughborough
Leicestershire
LE11 2PY

Tel: 01509 243720
Fax: 01509 218245
E-mail: rupert.harrison@andrewgranger.co.uk
(Ref: Rupert Harrison, FRICS, FAAV.)

2. LESSEE:

The Fearon Community Association Ltd.
(Registered Charity Number 1130457)
Fearon Hall
Rectory Road
Loughborough
Leicestershire
LE11 1PL
(Ref: Andy Rhodes (Chairman))

DRAFT HEADS OF TERMS
Subject to Contract

FEARON HALL, RECTORY ROAD, LOUGHBOROUGH
LEICESTERSHIRE, LE11 1PL



LESSEE'S SOLICITORS: Moss Solicitors LLP
80 Wood Gate
Loughborough
Leicestershire
LE11 2XE

Tel: 01509 217770
Fax: 01509 233698
DX: 19605 Loughborough 1
Email: J.Tarr@moss-solicitors.co.uk
(Ref: Jayne Tarr)

3. **PROPERTY TO BE LEASED:** All that property known as Fearon Hall, Rectory Road, Loughborough, Leicestershire shown edged red on the attached plan for identification purposes only.
4. **INITIAL TERM:** 3 Years (Three Years)
5. **INITIAL RENT:** £1.00 (One Pound) per annum, payable annually in advance.
6. **COMMENCEMENT DATE:
OF INITIAL TERM** From the date of completion of the agreed works to be undertaken by the Charnwood Borough Council and the Lessor.
7. **BREAK CLAUSE IN
INITIAL TERM:** Lessee to have the right to bring the initial 3 year term to an end on 3 months' notice in the event of the Lessee securing grants for improvements to the building and to exercise the option for the 25 year lease.
8. **OPTION TO RENEW/
FURTHER TERM** On the expiry of the initial term (or earlier if required), the Lessee shall have the right to call for a new lease of 25 years. (Option to be set out in a separate Option Agreement).
9. **COMMENCING RENT:
FOR FURTHER TERM** To be agreed – intended to be a stepped rent.
10. **RENT REVIEWS** At 5 year intervals (from commencement of further term) upwards only to market rent or indexed to RPI (whichever is the greater).

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11. **TENURE:** The initial 3 year lease shall be contracted out of the Security of Tenure Provisions of the Landlord and Tenant Act 1954 Part II. However, the 25 year lease shall be contracted in to the Act.
12. **USER CLAUSE:** The property shall only be used as a Community Hall together with associated car parking and amenity space together with subservient/ancillary commercial uses as set out below.
- The property shall be used as a meeting place for local inhabitants and residents' groups and for non-profit making uses including social, recreational and educational uses by local community groups/organisations. For the avoidance of doubt, hiring/leasing of part/parts of the building to commercial groups, individuals or companies shall be permitted in order to generate funds for the Lessee for the running of the building provided that these users are subservient/ancillary to the main Community Hall Use.
- The property shall be known as Fearon Hall and not by any other name.
- The use of the building for worship by any group shall be incidental to the main community use and there shall not be any exclusive use by any particular group.
- The Property shall not be used for party political purposes (other than as a Polling Station if required by the Local Authority).
- Not to use or permit the use of the property for uses which are contrary to the principles of the Church of England. In the event of any dispute on this issue, the matter shall be determined by the Bishop of Leicester who's decision shall be final and binding.
13. **APPROVAL OF PLANS:** The Lessee shall obtain the Lessor's approval to any alterations to the elevations and layout of the building and site and to any future extension or alterations (other than minor internal alterations to the building).
14. **TENANT'S IMPROVEMENTS:** A schedule of Tenant's Improvements shall be Agreed between the Lessor and Lessee prior to the commencement of the "further term" and the undertaking of these works shall be a condition of the lease.

DRAFT HEADS OF TERMS
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15. **PLANNING ETC.:** The Lessee shall obtain all planning and other necessary consents required for the use of the property and shall provide copies to the Lessor.
16. **MAINTENANCE:** The Lessee shall put and keep the property and the grounds and boundaries in good repair to the reasonable satisfaction of the Lessor and shall hand the property back to the Lessor in good repair at the expiry/ termination of the lease/s.
17. **ASSIGNMENT/ SUBLETTING:** The Lessee shall not assign, sublet or part with possession of the property or any part thereof, other than use by individual hirers in such a way that no security of tenure is obtained by them.
18. **RESERVATIONS OF USE:** The Lessors shall reserve the following parts of the Property for their benefit and for that of any parties nominated by them:-
- 18.1 Office/room shown edged orange on the plan.
- In addition, the following rights are reserved at no cost to the Lessors:
- 18.2 The use of one room during the week (if required).
- 18.3 The use of such parts of the property as may be required for Church events/occasions and on major Church/Christian Festivals etc.
- In all cases the right of useage shall include rights of way, use of toilets and kitchens as necessary.
- 18.4 The right to exhibit a substantial notice board in a public communal part of the Property.
- 18.5 A right of way shall be reserved to the Scout's store room at the western end of the property.
19. **NOT TO CAUSE A NUISANCE ETC.:** The Lessees and their hirers etc. shall not cause a nuisance, annoyance or disturbance to the Lessor's.
- The Lessees and their hirers etc. shall not object to the ringing of bells from the Church of All Saints Steeple Row, Loughborough.
20. **INSURANCE:** The Lessors shall insure the building against the usual

perils (including Public Liability Insurance) and the premium shall be recoverable from the Lessee.

21. **TERMINATION:** The lease shall contain provisions to allow the Lessor to terminate the lease in the event that the Lessee is in breach of its terms.
- The Lessee may bring the lease to an end at any time on giving to the Lessor not less than 12 month's notice, provided that all the terms of the lease have been complied with.
22. **COSTS:** Each party shall bear their own reasonable legal and Surveyor's fees and expenses incurred in the letting.
23. **CONSENTS:** The letting is subject to the approval of the PCC and the DBF as Custodian Trustee and to Charity Commission consent/scheme.
24. **ENERGY IMPROVEMENTS:** If improvements to the building are required by the Tenant or by legislation in respect of energy efficiency, the costs of this work shall be borne by the Lessee or, if the costs are borne by the Lessor, they shall be recoverable in full from the Lessee.