

DECISION TO BE TAKEN BY THE CABINET MEMBER FOR FINANCE AND RESOURCES

GALA BINGO HALL, AYLESBURY

1 Purpose

- 1.1 This report is presented to enable the transfer of Gala Bingo Hall, Aylesbury from Buckinghamshire Advantage for the nominal sum of £1.

2 For decision

- 2.1 To take a transfer of Gala Bingo, Aylesbury from Buckinghamshire Advantage for the nominal sum of £1.

3 Supporting information

- 3.1 Aylesbury Vale Advantage (AVA) was set up some years ago to establish a mechanism to deliver the then housing growth planned for the district. The Gala Bingo Hall was acquired by AVA in April 2014 to help enable the regeneration plans for the site known as Waterside North and already largely in the ownership of AVDC to be delivered.
- 3.2 Around the same time of acquiring the property, AVA was expanding to encompass all the Bucks authorities, which was when the company changed its name to Buckinghamshire Advantage (BA).
- 3.3 As the property was essentially business that had been started by AVA, it was included in the AVA Legacy Business when BA came into play and so has been 'ringfenced', which means that decisions have been made by Aylesbury Vale District Council (AVDC) and Buckinghamshire County Council (BCC) at the AVA Legacy Board (AVALB) rather than the whole BA Board. As part of this, when AVA became BA, AVDC was given a sum of project funds (for use on developing the masterplan for Waterside North) and AVDC undertook responsibility for the building on the basis that when the masterplan and project works affecting the Gala Bingo site were complete, the building could then be transferred to AVDC.
- 3.4 Although the programme of works to the site has not been completed, on 23 January 2018, AVDC asked for approval from the AVA Legacy Board for the Gala Bingo Hall to be transferred to AVDC because potential interest in the site was being dampened once it was realised that the building was not in the full control of AVDC. The AVAL Board agreed to transfer the building to AVDC for £1 plus the VAT on the acquisition value (£1,100,000). In addition, as the company is severely stretched for funds, it was agreed that the legal costs of the transfer would be borne by AVDC.

Lease position

- 3.5 The building is currently leased to Buzz Group (previously Gala Bingo) which is the occupying tenant of the building. Buzz Group has served notice on BA that it wishes to exercise its break clause and end the tenancy on 6 March 2019. It is understood that Buzz Group is re-structuring its portfolio and is divesting itself of sites which are underperforming. Whilst this presents some challenges in what to do with the management of an empty building, it does

make any regeneration of the site easier given that there will be no occupational tenancy of the building.

VAT position

- 3.6 The notice of termination has raised a question regarding the transfer and the VAT position. Previously, it had been thought that it would be a Transfer of a Going Concern (TOGC) as AVDC was intending to continue to rent the property to Buzz once it had been transferred to it. AVDC would of had to comply with certain regulations set out by HMRC in order to do this. VAT is not payable on a TOGC, but if it is not a TOGC, VAT would be payable on the value of the property. In the case of a similar transfer from AVA to BCC, VAT was payable on the acquisition value. If a similar approach was adopted and the acquisition value of the Gala Bingo Hall was used, VAT would be payable on a value of £1.1m and it would mean that AVDC would have to pay £220,000 VAT on the transaction. BA would then need to account for it in the appropriate VAT return.
- 3.7 In order to be considered a TOGC Article 5 of the VAT (Special Provision) Order 1995 (SI 1995/1268) requires that:
1. The assets are used by the transferee in carrying on the same kind of business
 2. Where the transferor is a taxable person the transferee is also a taxable person (both BA and AVDC are)
 3. The transferee, before the time of the transfer, exercised an option to tax and given due notice of their option to HMRC
 4. The transferee, also before the time of the transfer, has given to notification to the transferor, that paragraph 5(2B) does not apply to the transferee.
- 3.8 In view of the potential impact of the termination of the lease on the VAT position of the transfer, further advice has been sought from AVDC's VAT Advisor and he has essentially advised that if the transfer happens in reasonable time before 6 March 2019, it may be treated as a TOGC (providing AVDC comply with the HMRC requirements for a TOGC, i.e. in serving the required notices in points 3 and 4 above).

Valuation

- 3.9 The council's valuers have been instructed to undertake a valuation of the property. They are of the opinion that the market value of the property is in the region of £405,600 (Existing Use Value). With regard to possible future use of the site, as the existing lease expires in March 2022 and any future development would not be possible until vacant possession has been granted upon lease expiry (i.e. on 6 March 2019), the opinion of alternative use value is £107,000. The council's constitution sets that the acquisition or disposal of land and property with a value greater than £500,000 is a key decision. On that basis, it is considered that the decision to accept a transfer of the Gala Bingo Hall is not a key decision, and therefore the decision does not require advance publication in the council's cabinet work programme.

Title report and searches

- 3.10 AVDC's lawyers have carried out searches on the property and there is nothing of concern that has been revealed. There are covenants within the transfer to AVA which limit use, but these fall away in April 2019. There will be an SDLT liability of £1,400 to pay on completion and AVDC has agreed to pay BA's legal and VAT advice fees.

Rates

- 3.11 The Rateable Value of the property is £26,750 and the rates payable are £12,840 for 2018/19. AVDC will become liable for the business rates at the time of transfer, but will be entitled to three months of empty property relief.

Risk and due diligence

- 3.12 Officers have not carried out the usual risk and due diligence checks on the property other than the standard legal, drainage and land charges searches. It should be noted that the building is in a poor state of repair, although AVDC is already acting on behalf of BA in insuring and keeping in fair repair the structure of the building, without spending a large amount of money in bringing the building into full repair, given it is not likely to be re-let for its current use. There will however be ongoing and increasing maintenance costs, as is the case when buildings become unoccupied. In addition, AVDC will on completion of the transfer, pick up the costs of utilities and boarding up and securing the building upon vacant possession.

4 Options considered

- 4.1 None

5 Reasons for Recommendation

- 5.1 These are set out in the above report.

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