

Guildford Borough Council

Report to: Executive

Date: 22 June 2023

Ward(s) affected: Castle

Report of Director: Joint Strategic Director - Place

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Report Status: Open

Granting a lease at less than best consideration to Yvonne Arnaud Management Limited at Old Town Mill

1. Executive Summary

- 1.1. The Council wishes to grant a new lease to the Yvonne Arnaud Management (YAM) whose financial accounts have been reviewed and their level of affordability exceeds the maximum discount of the estimated annual market rental value that can be approved under officer delegation. Officers are therefore seeking approval from the Executive to grant a new lease to YAM for a term of 5 years at less than best consideration.

2. Recommendation to Executive

- 2.1. That the Executive approves the grant of a new 5-year lease at less than best consideration to Yvonne Arnaud Management at Old Town Mill.

3. Reason(s) for Recommendation:

- 3.1. To support Yvonne Arnaud Management Limited.

4. Exemption from publication

- 4.1. None.

5. Purpose of Report

- 5.1. To seek approval from the Executive to grant a new lease for a term of 5 years at less than best consideration to Yvonne Arnaud Management Limited (YAM).

6. Strategic Priorities

- 6.1. In addition to the theatre offering, the studio space within the Old Town Mill supports the Creative Learning Programme which supports disenfranchised and low social economic groups across the borough. The Programme provides targeted activities that specifically engage with those who have limited opportunities to access the Arts. This includes families, children and young people who have a low household income or low socio-economic status; young carers; the unemployed; and adults who may be at risk of harm or social isolation. YAM prioritise groups from the Bellfields & Slyfield and Westborough wards.
- 6.2. Further to theatre performances and their Creative Learning Programme, YAM supports local artist communities. The studio space has accommodated Guildford Arts Summer Exhibition, The Man In the Moon Youth Theatre, Stop Gap Dance, Rare Youth Theatre Productions, and YMCA 'Downslink' drama group.
- 6.3. If the Council were to grant a lease to YAM, they would be able to continue their cultural and social activities which seek to help vulnerable residents and tackle inequality in Guildford's communities thereby directly supporting the Council's strategic priorities. YAM has

provided additional information appended to this report which sets out the charity's community initiatives and activities.

7. Background

- 7.1. YAM previously benefitted from a 50% subsidy of the annual market rental value, paying a rent of £22,750 per annum under the former lease which expired in December 2022. The tenant has since been in occupation of the subject property under a Tenancy at Will whilst terms for a new lease are agreed. From a legal perspective, the tenant cannot remain in occupation of the property indefinitely on the current Tenancy at Will and would therefore need to either enter a new lease at an agreed rent or vacate the premises.
- 7.2. The Council recently obtained an independent valuation of the Old Town Mill which indicated an estimated market rental value of £65,000 per annum. YAM's previous three years' audited accounts were reviewed together with their business plan and forecast projections which indicate a maximum affordability of £22,750 per annum which remains unchanged since the Council granted the previous lease in 2012. The Council began a phased reduction in grant funding from 2021/22 to 2024/25 and despite efforts to restructure their finances, YAM has been unable to absorb the shortfall due to an increase in costs to operate the building and the lasting impact of Covid-19 on the Performing Arts sector.
- 7.3. As per the terms of the Council's Less Than Best Consideration policy approved by the Executive on 21 January 2020, the Executive is required to approve the terms for a proposed lease where the undervalue (the difference between the market value and the proposed transaction, which includes a calculation of the forgone rent) of the lease is greater than £30,000, or the lease term is greater than 15 years. In this case, the undervalue for the proposed new lease equates to £208,650 over a term of 5 years and a foregone rent of £42,250 per annum. Officers are therefore seeking approval from the Executive to grant a lease to YAM at less than best consideration.

7.4. The property currently falls under use class E and has the potential to be redeveloped for alternative uses such as restaurant, hotel, office, or retail where the Council could charge a market rent to an incoming tenant. However, the property is Grade II Listed which will affect the financial viability to convert it and the Council's ability to let it to a commercial occupier. Officers recommend that the Executive grants a new lease to YAM for a term of 5 years to allow the Council time to undertake a detailed options appraisal of the building. This will enable officers to understand whether the building would be suitable for conversion. This will also take YAM's occupation beyond completion of the adjacent redevelopment site, following which, the opportunity to relet the building will be more achievable.

8. Consultations

8.1. Consultation will take place with the Lead Councillor and the Ward Councillors will be notified.

9. Key Risks

9.1. If the Executive does not approve the grant of a new lease to YAM at less than best consideration, and instead wishes to charge a full market rent, YAM cannot afford £65,000 per annum and would need to vacate the property. The tenant has occupied the property for many years and uses it for theatre performances, office space, storage, workshops, and dressing areas. The loss of the property would have a considerable operational impact on the tenant as the contents would need to be housed elsewhere, without anywhere suitable to relocate them at short notice, which may in turn threaten the viability for them to operate the main theatre.

9.2. In the event officers were unable to promptly secure a new tenant and the property was to remain unlet, the Council would incur considerable void costs such as business rates, utility charges and general maintenance until a new tenant was found; these additional revenue costs have not been budgeted for this financial year.

Furthermore, the Council would need to budget significant capital expenditure to prepare the building for reletting.

10. Financial Implications

10.1. If the Executive agrees to grant a lease at a rent of £22,750 per annum, equating to a 65% subsidy of the annual market rent, the opportunity cost to the Council is £208,650 of rental income, over the term of the lease, which equates to £41,730 per annum at today's value. (Values are expressed at today's value meaning that the calculation of value allows for a change in the value of money over time. For example, £42,250 today is not worth the same £42,250 in 5 years' time due to the impact of inflation and interest over the 60-month period). This is calculated below.

10.2. The capital value of the proposed lease at less than best equals the reduced rental income for 5 years plus an assumed market rent from year 5 onwards:

Lease length:	5 years
Market rent:	£65,000 per annum
Rent reduction:	65% for 5 years
Capitalised value (restricted value):	£603,850 at today's value

Compared to the capital value equal to the rental income stream of leasing the property at a market rent into perpetuity:

Lease length:	Perpetuity
Market rent:	£22,750 per annum
Rent reduction:	0%
Capitalised value (unrestricted value):	£812,500 at today's value

The value of forgone income, equivalent to the undervalue:

Unrestricted less Restricted Value £208,650

10.3. The table below illustrates the Council grant to Yvonne Arnaud Management against the rent paid over the last 4 years, as well as the proposed grant for year 24/25.

10.4. The proposed discount will not impact the Assets & Property service

Year	Grant Funding	Rent Paid
19/20	£310,220	£22,750
20/21	£310,220	£22,750
21/22	£310,220	£22,750
22/23	£273,000	£22,750
23/24	£236,000	£TBC
24/25	£200,000	£TBC

budget because the rental income was not adjusted to account for an increase.

11. Legal Implications

- 11.1. The discounted rent is a subsidy under the Subsidy Control Act 2022 and it is recommended that the subsidy is provided under the Minimal Financial Assistance (MFA) exemption provisions. These provisions allow for an enterprise to receive a subsidy of up to £315,000 over a three-year rolling period. There is no need to make an assessment against the Subsidy Control Principles if this exemption is used, but certain notices need to be given (by both the Council and the tenant), and the Council must document how it decided that MFA applies. As the MFA exceeds £100,000, the award will also need to be published on the subsidy database within three months of confirmation of the award.
- 11.2. The value of the proposed discount on rent is £42,250 per annum for a lease term of 5 years. As the MFA is calculated at the time the agreement is entered into, the total value of the subsidy is 5 years X £42,250 = £211,250.
- 11.3. When determining whether the MFA exemption can be relied upon, all other subsidy/aid received by YAM (from any public authority, not just the Council) must be cumulated to ensure the £315,000 threshold over the three-year rolling period is not exceeded. It is important also to understand whether YAM receive other assistance under a 'no aid' exemption or as subsidy.

- 11.4. Officers have received written confirmation from YAM that they do not currently receive any further grants or funding from any other local authority. They therefore qualify for the MFA exemption, allowing the discounted rent to be granted, subject to the decision by the Executive members.
- 11.5. If approved a formal letter will be sent to YAM notifying them that it is intended that the discounted rent will be provided as MFA and asking them to provide a signed declaration that the £315,000 MFA threshold has not been exceeded. Once the award is made a further letter will then be sent and the award will be published.
- 11.6. Officers are aware that YAM receives a rolling grant from the Council to support its programme of cultural engagement activities for the local community. During 2022/23 and 2023/24 this amounted to £273,000 and £236,500 respectively. YAM is due to receive £200,000 in 2024/25. However, this rolling grant was awarded primarily to support YAM's 'non-economic' activities under its current transformation programme which is directed toward infrastructure and other improvements to help maximise learning and outreach activities, and to use by community groups. The rolling grant award will therefore not count toward the MFA threshold.

12. Human Resource Implications

- 12.1. There are no relevant HR implications.

13. Equality and Diversity Implications

- 13.1. This duty has been considered in the context of this report. Officers advise that YAM cannot continue to lease the premises if the discounted rent is not awarded. This will negatively impact the social and cultural engagement work they currently provide within the local community.

14. Climate Change/Sustainability Implications

- 14.1. There are no relevant climate change/sustainability implications

15. Summary of Options

The Executive has three options:

- 15.1. Terminate the Tenancy at Will with immediate effect. This option does not give YAM sufficient time to vacate the property and find suitable alternative accommodation to relocate the facility. The Council would acquire a financial liability because the loss of rent would impact the revenue budget and the works required to prepare the building for reletting would impact the capital budget.
- 15.2. Propose a lease to YAM at the full market rent of £65,000 per annum. This option exceeds their maximum affordability and restricts their ability to operate the building. As above, the tenant would have to vacate the property and the Council would acquire a financial liability.
- 15.3. Grant a lease to YAM for a term of 5 years at less than best consideration. This option allows the tenant to continue supporting its community activities for the next 5 years and to prepare securing suitable alternative accommodation to relocate the facility. This option also affords the Council time to undertake a detailed options appraisal of the building whilst continuing to receive a rental income and divest of its operating costs.

16. Conclusion

- 16.1. Officers recommend granting a lease to Yvonne Arnaud Management and are seeking approval from the Executive to grant a lease for a term of 5 years at less than best consideration at a rent of £22,750 per annum which equates to a subsidy of 65%, and a discount of £42,250 per annum.

17. Background Papers

None

18. Appendices

Appendix 1: Below Market Rent Application Form setting out the charity's community activities and its reasoning to grant a lease at less than best consideration.