

TO: THE EXECUTIVE DATE:
1 June 2021

SOUTH HILL PARK TRUST LIMITED – PENSION LIABILITIES
Executive Director: Resources / Executive Director: Delivery

1 PURPOSE OF REPORT

- 1.1 To present for the Executive's consideration a request from the South Hill Park Trust for Bracknell Forest Council to act as guarantor for its part of the local government pension scheme. This request has been prompted by there no longer being any active members of the Trust's scheme paying into the pension fund, meaning that the Trust is facing a cessation situation and a consequent requirement to make up the current deficit in its pension scheme through a significant financial contribution.

2 RECOMMENDATIONS

That the Executive;

- 2.1 **Considers the request from the South Hill Park Trust to act as guarantor for its pension scheme, the detail being set out in a letter from the Trustees to the Leader attached as [Exempt] Annex A, and agrees a response.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 The recommendations are designed to ensure a response can be conveyed to the request received from the South Hill Park Trust, as set out in Annex A (in part 2 of the report).

4 OPTIONS CONSIDERED

- 4.1 The Executive could agree that the Council acts as guarantors for the SHP Trust pension scheme as requested by the Trust, noting the financial risks this could involve, most significantly in relation to the expectation from the Berkshire Pension Fund that this would include underwriting the £■■■■ contribution required to ensure a "fully funded" position is reached
- 4.2 The Executive could reject the request from the trust to act as guarantor for the SHP Trust's pension scheme, on the basis that there is no legal connection between the two organisations. This would mean that the Trust would cease to operate. The Council would then need to seek an alternative organisation to manage an Arts programme at SHP or consider other uses for the facility which is in its ownership.
- 4.3 The Executive could inform SHP Trust and the Berkshire pension Fund that it is willing to absorb the SHP Trust's pension scheme into its own on the basis that it would be treated as fully funded, while declining to underwrite the payments totalling £■■■■ required by the Trust to secure this position. The Berkshire Pension Fund would then need to determine whether the risk of default on the Trust's £■■■■

required contribution could be shared across all employers participating in the Berkshire Fund.

5 SUPPORTING INFORMATION

- 5.1 The buildings and land at South Hill Park in Bracknell are owned by Bracknell Forest Council and Bracknell Town Council and are operated as an arts facility under a lease arrangement by the South Hill Park Trust Limited. The Trust is managed by its Trustees as an independent organisation but receives grant and other financial support from both Bracknell Forest Council and Bracknell Town Council. This currently totals £306,000 from BFC, including funding for grounds and building maintenance as well as general grant support for the Trust's activities. As a charitable organisation, the Trust qualifies for 80% mandatory charitable relief from its rates bill of £46,000 and receives a further 20% discretionary relief from BFC.
- 5.2 With the buildings at SHP belonging to Bracknell Forest, the Council also invests directly as necessary in major, structural repairs, to ensure they remain in a good overall state of repairs. The council has recently invested in the building, both in supporting the development of income generating spaces such as the wedding venue and the Coach House; as well as ongoing recent maintenance of key elements such as the fire doors in the Wilde Theatre. This investment will enable the Trust to plan for the reopening of the centre and to make maximum use of the available facilities.
- 5.3 As with all Arts organisation, SHP Trust has been significantly affected by the Covid pandemic. The facility has mostly been closed since March 2020 and has been generating limited income from sales since then. It normally employs over 60 staff, with the vast majority over the past year having been put on the Government's furlough scheme. The trust has not qualified for any of the mandatory business grant schemes but has been successful in securing funding through Government grants aimed at arts and culture. This, combined with the limited income generation, has meant that the Trust ended the 2020/2021 financial year in broadly the same financial position as it started it.
- 5.4 SHP Trust buys its electricity and gas through BFC. In recognition of the Trust's financial challenges during Covid, with agreement from Executive Members the Council has allowed it to repay sums owed over an extended period.
- 5.5 An additional and significant financial issue for the Trust, entirely unrelated to Covid, has also crystallized in the past 12 months, related to its participation in the local government pension scheme. The issues are clearly set out in a letter sent to the Leader of the Council by the Chair of the Trust's Finance and Audit Committee, which is attached as Annex A (part 2 of to this report. In essence, since the Trust no longer has any active employees paying into the scheme (there are 25 former employees with accrued benefits), it is now a "closed" scheme whose liabilities exceed its assets. In this situation a "cessation" payment is required to the Berkshire Pension Fund (administered by RBWM), to bring these into equilibrium.
- 5.6 As the letter sets out, the level of the cessation payment due from the Trust depends on whether its ongoing fund is absorbed within that of another employer in the Berkshire Fund, or remains as a stand-alone entity that has to cover a potential worst case scenario difference between liabilities and assets until the final scheme member dies.

Unrestricted

- 5.7 The Trust has concluded that it would be unable to secure the [REDACTED] of funding which is required if it cannot secure a guarantor and would need to cease its operations under that scenario. The Trust believes it could meet the payment of £ [REDACTED] over a 5 – 6 year period which would be required to have the scheme deemed by the Pension Fund Authority as “fully funded”, subject to any future difference between liabilities and assets deal with as part of a larger employer’s fund. The Trust has made a payment to the Pension Fund of £ [REDACTED] in the 2020/2021 financial year. It is acknowledged by the Trust that there is a risk that its finances over the years ahead may not be able to accommodate this significant commitment, although they have budgeted for a further payment of £ [REDACTED] in 2021/2022.
- 5.8 There is no established legal connection between Bracknell Forest Council (or its predecessors) and the SHP Trust, neither generally nor in relation to its pension scheme. The Council has been identified by the Trust and the Pension Fund Authority as a potential guarantor due to its location within our administrative boundary and recognising that local residents benefit from the events and activities it organises.
- 5.9 The Pension Fund’s Actuary has confirmed that merging the 25 SHP Trust individuals into the overall Bracknell Forest part of the fund (assuming the Trust’s pension fund was deemed to be in a “fully funded” position at the point of transfer) would be unlikely to make any material difference to the overall amount of pension contributions the Council would need to make in future years. The Executive Director: Resources is therefore content to advise Members that absorbing the Trust’s pension scheme into Bracknell Forest Council’s, from a fully-funded position, would not represent a material financial risk.
- 5.10 There is, however, an associated expectation from the Berkshire Pension Fund that the proposed arrangement would also involve underwriting the Trust’s £ [REDACTED] liability to secure a fully funded position. This would not be without risk for Bracknell Forest Council. Although the Trust has been successful in attracting additional Arts Council funding in the past year, the uncertainty around the length of time social distancing measures may need to continue even after venues are re-opened, means that it is possible that the Trust’s trading situation may not be able to sustain the annual repayments of around £ [REDACTED] - £ [REDACTED].
- 5.11 While the Council’s current financial position is strong, our medium-term outlook remains challenging and Members are advised to give careful consideration to the specific risks that would be involved overall in acting as guarantor for the SHP Trust pension fund in the form proposed by the Trust and the Pension Fund Authority before agreeing a response to the Trust.
- 5.12 The consultancy firm Activist undertook a full review of South Hill Park in 2017/2018, as part of the Transformation Programme. Many of the recommendations from that review have been implemented. The current board of trustees has continued to deliver a high-quality arts programme for the borough whilst also focusing more on additional income generation and commerciality. The trustees have managed the reduction in grant funding in recent years, and have maintained the level of balances they hold, by increasing income in other areas. At the time of the review, Activist concluded that it was unlikely we would be able to find another arts organisation to take over the running of the Arts centre, if the Trust were to cease to operate. The impact nationally of the Covid pandemic has further reduced the number of arts organisations available to take over the operation, if the Trust were to fold.

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- 5.13 The arts offer within Bracknell Forest area is centred on South Hill Park Trust and the council's grant funding and other support has helped to ensure that a wide-ranging offer has been sustained within the borough. The arts promote involvement, participation and enjoyment; they also build culture, identity and belonging. A strong and vibrant arts and culture offer can bring communities together, whether these be geographic, affinity or communities of interest. There is also a clear link between participation in arts and cultural activities and people's mental health and wellbeing, and culture can play a key role in tackling isolation and loneliness, as has been evidenced by the impact of the absence of access to such activities during the Covid pandemic.
- 5.14 A strong arts and cultural offer can act as a stimulator of economic activity, focusing footfall into a particular area and encouraging visitors to go to places that they would not normally visit. Cultural activities can also focus visitors to different times of the day, allowing supporting and ancillary services to extend their trading hours based on servicing the visitors after the activity has finished.
- 5.15 It is important that arts organisations operate in concert with other cultural services. The South Hill Park Trust is currently making an application to the Arts Council for the relaunched "Creative People and Places" funding programme, which will enable them to engage more widely with the community in arts and culture, with a specific focus on those who are vulnerable or socially isolated.
- 5.17 In any assessment of the financial case, the council's wider cultural strategy needs to be taken into consideration. South Hill Park Arts Centre and the Board of Trustees are likely to play a central role in the development the future Arts and Culture strategy for the borough. The loss of the Trust could create or expand a cultural desert, and given the consolidation in the sector, it is likely that no new entrant would re-provide these services. This loss could have a significant negative impact on the connected services and service providers within the borough.

6 **ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

Borough Solicitor

- 6.1 There are no legal impediments to the Council acting as guarantor for South Hill Park Trust in relation to the 25 former employees of the Trust within the RBWM Pension scheme on the terms sought. Express statutory provisions that could be relied upon to facilitate such an undertaking include;
- **S1 Localism Act 2011**-The general power of competence
 - **S111 Local Government Act 1972**- Power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Council's functions.
 - **S137 Local Government Act 1972**- Power to incur expenditure for certain purposes not otherwise authorised which in [the Council's] opinion is in the interests of, [and will bring direct benefit to,] their area or any part of it or all or some of its inhabitants

Director: Resources (s151 Officer)

6.2 The financial issues and risks to the Council are included in the body of the report.

Equalities Impact Assessment

6.3 There are no equalities issues directly arising from the matters in this report.

Strategic Risk Management Issues

6.4 There are no direct links to risks on the Council's strategic risk register arising from this report, though some financial risks around the proposal submitted by the SHP Trust are highlighted in the report.

7 Additional information

7.1 This public report has been redacted in line with the Local Government Act 1972, Schedule 12a. In that these elements have been deemed to relate to the financial and business affairs of a third party. However, given that the Guarantee, if given, will be based on public funds, the public interest in keeping the whole report exempt is outweighed by the public interest in disclosing the majority of the report.

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