

## LONDON BOROUGH OF HAMMERSMITH & FULHAM

**Report to:** Deputy Leader of the Council

**Date:** 07/12/2022

**Subject:** Bush Theatre Roof Replacement & Internal Improvements Funding Agreement

**Report author:** Matthew Paterson, Head of Spatial Planning

**Responsible Director:** Jon Pickstone, Strategic Director of Economy

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### SUMMARY

The Alternative Theatre Company Ltd operates the Bush Theatre (TATC Ltd) housed in the former Passmore Edwards Public Library building. Built in 1895, the building was used as a library until the new Shepherd's Bush library was built as part of the Westfield's development. The Bush Theatre was relocated to the building in 2011.

The Council and the Alternative Theatre Company entered into a Lease of the property on 26 September 2011 for a term of 125 years (the lease was varied in March 2018 and a further supplemental lease of adjoining garden land granted to TATC Ltd at the same time and on same terms and conditions as the Lease). The Lease provided for tenant to undertake Improvements Works (subject to fundings and consents).

The Council is the Landlord/Freeholder of the building, and it is leased to the Alternative Theatre Company under a full repairing and insuring lease ie, a clear lease. The implication is that the tenant TATCL is obligated under the lease to carry out all repairs at their own cost as well as refund the Council for insurance costs.

There is no requirement upon the Council under this lease to carry out repairs or replacements. Whilst under no obligation to do so, the Council is making a financial contribution in this case considering:

- the roof works enhance the environmental performance of the building, contributing towards the Council's net zero carbon commitment;
- the role and function of the organisation in providing access to high quality arts and cultural provision to local residents who may otherwise not have the same opportunity to engage in the arts; and
- the risk to the long-term viability of the Bush Theatre and, therein, the ability to continue to provide outreach programmes, host international plays, promote local playwrights, and provide a venue that enables the community to come together in celebration of arts and culture.

£4.3m was spent by the Bush Theatre on refurbishments to the building in 2016/17 to make it more accessible, including a new entrance, new front-of house area and provision of an exterior garden terrace. The current proposed improvements are to replace the leaking slate roof and enhance the environmental performance of the building.

The trust of the Bush Theatre has requested £70,949 of Section 106 funding as a contribution towards the £273,400 cost of the improvement works to the theatre building which officers have identified could be met by way of allocation of Section 106 funding secured from the S106 agreement for the St James 'City Living' development (Planning Refs 2014/04726/OUT; 2016/03907/VAR; & 2017/04377/VAR). The Section 106 funds were secured towards the infrastructure costs within the White City Opportunity Area, within which the Bush Theatre is located and provides cultural activities, including community and school outreach programmes.

This report seeks the approval of the Deputy Leader of the Council to enter into a formal community grant agreement (attached at Appendix 1), which sets out the terms of the grant and obligations on the trust of the Bush Theatre.

## RECOMMENDATIONS

That the Deputy Leader authorises:

1. The grant of £70,949 to the Bush theatre.
2. In consultation with Assist Director of Legal services, the Council enter into a Funding Agreement (attached at Appendix 1), with Alternative Theatre Company Ltd for a total value of **£70,949**.
3. That **Appendix 2** is not for publication on the basis that it is legally privileged as set out in paragraph 5 of Schedule 12A of the Local Government Act 1972.

**Wards Affected:** Shepherd's Bush Green

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	The use of the S106 funds secured from development will continue to support the provision of arts and cultural activities to the benefit of local H&F residents.
Creating a compassionate council	The Bush Theatre provides projects, workshops and opportunities for residents of all ages and abilities across H&F to engage in the theatre and to develop local talent.
Doing things with local residents, not to them	Third sector organisations, such as the Bush Theatre, work closely with our local residents to provide opportunities to engage in the arts, including free school outreach programmes.
Being ruthlessly financially efficient	H&F's Facilities Management team

	have scrutinised the tender specifications and the Bush Theatre has sought funding from other sources for the majority of the project costs.
Taking pride in H&F	The funding will ensure this longstanding community facility is modernised and remains fit for purpose.
Rising to the challenge of the climate and ecological emergency	The improvements to the Bush Theatre building will improvement the overall fabric of the building and reduce energy and carbon.

## Financial Impact

Finance officers have reviewed the terms and conditions and reporting requirements within the Funding Agreement and are satisfied that the agreement includes a requirement for the Bush Theatre Trust to provide evidence of works undertaken and a provision for clawback to protect the Council's investment.

The costs of £70,949 will be funded from the balances available from the Section 106 agreement for the St James 'City Living' development (Planning Refs 2014/04726/OUT; 2016/03907/VAR; & 2017/04377/VAR). Planning Obligations officers have confirmed that there is available funding from this agreement and the proposed use of these funds accords with the legal agreement. A separate Authority report will be sought, that includes approval by the Cabinet Member for the Economy and Cabinet Member for Finance, to formally allocate the S106 funding to the Bush Theatre improvement works.

As part of entering into this agreement, a credit report was requested for the Bush Theatre. The report has indicated a very low risk credit rating of 86 and the suggested contract limit of £270,000 and turnover of £1.8m should be more than sufficient for the value of the proposed grant.

*Finance Implications completed by: Daniel Rochford, Head of Finance Tel :0208 753 4023, email: [danny.rochford@lbhf.gov.uk](mailto:danny.rochford@lbhf.gov.uk) 6<sup>th</sup> December 2022*

*Finance implications verified by: Sukvinder Kalsi, Director of Finance, 6<sup>th</sup> December 2022*

## Legal Implications

This report is seeking approval for the Council entering into a Funding Agreement with the Bush Theatre to the value of £70,949. The purpose of the grant is to contribute to improvement works to the premises at 7 Uxbridge Road subject to the terms set out in the Funding Agreement (appended to this report).

The Council has the power to award funding under section 1 of the Localism Act 2011, which allows the Council to do anything that individuals generally may do, in particular, if it is carried out for the benefit of the Council, its areas, or persons resident or present within the borough.

The Council's Financial Regulations require key controls to be in place to ensure the Council's interest are protected. They have been addressed in the body of this report and the Council will also enter into a grant funding agreement with the Trust, a copy of which is appended to this report.

The regulations also require that full records will be maintained of all grants and related applications for assistance, which should identify which staff are involved in the processing of applications and grants, and record the date of approval of any grant or other assistance, and by whom, and any other relevant transaction information arrangements for this will need to be put into place.

Legal Services shall work with officers on executing the terms of the written grant agreement. Payment of the grant may be made once the Deputy Leader approval is obtained, call-in has expired and the grant agreement has been entered into.

The proposed use of the funds must satisfy the criteria at Schedule 2 of the S.106 Agreement which provides: "*The WCOA Contribution is to be applied within the WCOA towards the Highway Works, affordable housing, employment initiatives by the Council, some or all to the cost of social and physical infrastructure and non-infrastructure items as identified in the WCOAPF and towards other necessary development infrastructure works required to alleviate the impacts of the Development including local mitigation measures, ... the actual infrastructure projects or types of infrastructure or non-infrastructure items or other items funded or provided from the sum will be set out in the White City Opportunity Area List produced by the Council and provided to the Developer from time to time*".

The Lease granted in 2011 (and also supplemental lease) is a full repairing lease in which the tenant is responsible to keep the property in good repair and condition being not only the interior but also the structure, including the roof. The Council has no express or implied repair obligations under the lease or to contribute toward the same - its only obligation is to insure the property (with the tenant paying the premium)

*Fortune Adebiji, Chief Solicitor (Planning and Property) email:*  
[Fortune.Adebiji@lbhf.gov.uk](mailto:Fortune.Adebiji@lbhf.gov.uk) 17th November 2022

## **Funding Agreement**

Under the Council's Financial Regulations. it is a condition of providing any grant that the recipient, here the Bush Theatre enters into a Funding Agreement with the Council. Bush Theatre have provided a draft of the Funding Agreement for the Council to sign. Subject to a couple of relatively minor amendments that have been suggested by Legal Services, the Funding Agreement is fit for purpose and can be signed.

The grant is not an unlawful Subsidy (which replaced State Aid since 1<sup>st</sup> January 2021). This is because it is a grant to a Charitable body which is not involved in economic activity and/or because the grant is unlikely to affect international trade since it is a subsidy to a truly local company.

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## Background Papers Used in Preparing This Report

None.

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## DETAILED ANALYSIS

### Proposals and Analysis of Options

1. The proposed works are to replace the whole of the existing slate roof covering which is currently leaking.
2. Under the terms of the lease agreed by the Bush Theatre for the former Shepherd's Bush library building, the Council is under no obligation to contribute towards the cost of works. Full responsibility for repairs and maintenance is with the Bush Theatre which includes the roof replacement works.
3. Whilst under no obligation to do so, the Council is making a financial contribution in this case considering:
  - the roof works enhance the environmental performance of the building, contributing towards the Council's net zero carbon commitment;
  - the role and function of the organisation in providing access to high quality arts and cultural provision to local residents who may otherwise not have the same opportunity to engage in the arts; and
  - the risk to the long-term viability of the Bush Theatre and, therein, the ability to continue to provide outreach programmes, host international plays, promote local playwrights, and provide a venue that enables the community to come together in celebration of arts and culture.
4. The contribution has been issued with the following conditions:
  - continuing into the future, that Bush Theatre takes full responsibility for all repairs (which includes replacements where necessary) as required by the lease and makes no future financial requests to the Council for property costs
  - the Bush Theatre include in their published annual statement of accounts an adequate annual commitment to a sinking fund to meet their lease responsibilities, informed by whole life property costing; and/or that the theatre puts in place effective financial mechanisms to pay for future property costs incurred considering their limited reserves and cash flow position e.g., loan facility.

5. It should be noted that Cllr Umeh currently sits on the Board of Trustees of the Bush Theatre. However, Cllr Umeh is not the decision maker for the Council when it comes to decisions on whether or not to allocated S106 funding or to enter into a Funding Agreement. This therefore does not give rise to any conflict of interest.
6. RAM Building Consultancy Ltd (RAM) were instructed by Bush Theatre to prepare tender documentation and procure competitive fixed price tenders for the roof covering replacement and associated works.
7. Three building contractors were invited to tender in January 2022, and three quotes were received, with M&J Group offering the best price. The total projects costs are £272,449, which includes 9% contingency.
8. The Bush Theatre has secured a grant of £201,500 from the Arts Council England (ACE) towards the refurbishment works and is seeking Council funding to meet the rest of the build costs.
9. The request for funding was considered and assessed by the S106 Officer Board and recommended for approval in principle. Before the funds can be released, and in compliance with Financial Regulations, the Bush Theatre is required to enter into a Funding Agreement (draft attached at Appendix 1).
10. The Funding Agreement sets out the terms and conditions to apply to Council's funding of the project, and ensures the funds are specifically spent on the project, evidence is provided of the expenditure of the Council funds on the works (such as copies of contractor invoices), and that all other legal obligations are complied with. The agreement also includes appropriate clawback clauses to ensure that, in the event the works are not undertaken or the agreement is breached, the Council can recoup the S106 funds from Bush Theatre.
11. The submission of evidence of expenditure is also required for the purposes of S106 monitoring and to demonstrate that the funds received through the S106 agreement, as part of planning application, have been used appropriately and in accordance with the legal terms of the S106 agreement controlling those funds.

### **Reasons for Decision**

12. Council's Financial Regulations require that grant awards to voluntary and community organisations of £20,000 - £299,999 be approved by the Deputy Leader of the Council.

### **Equality Implications**

13. The replacement of the roof of the Bush Theatre will not have any impacts for groups within our community with protected characteristics.



## **Risk Management Implications**

14. The report recommends entering into a Funding Agreement with the Bush Theatre to contribute to works required to a property which is used to provide cultural and community services for local residents. As the Council is only part-funding the works, which will ensure residents can continue to engage in the arts, the recommendation is in line with the objective of being ruthlessly financially efficient and creating a compassionate council. Officers will need to ensure that evidence of expenditure is provided and the proposed works are undertaken in accordance with the Funding Agreement.

*David Hughes, Director of Audit, Fraud, Risk and Insurance, 4<sup>th</sup> November 2022*

## **Climate and Ecological Emergency Implications**

15. The proposed works seek to extend the life of the existing community building built in 1895. The works, and Council's funding, are primarily concerned with addressing the leaking roof. However, in addition to the roof replacement element of the project, the Bush Theatre are investing £68,500 into sustainability measures for the building. This work is fully funded by ACE and will result in a minimal material improvement to the sustainability performance of the building.

*Hinesh Mehta, Head of Climate Change, Email: [Hinesh.mehta@lbhf.gov.uk](mailto:Hinesh.mehta@lbhf.gov.uk) 4<sup>th</sup> November 2022.*

## **Section 106**

16. The funds for the grant agreement are coming from the S106 agreement with St James on their 'City Living' development (Planning Refs 2014/04726/OUT; 2016/03907/VAR; & 2017/04377/VAR). The terms of the funding are a financial contribution towards infrastructure costs within the White City Opportunity Area within which the Bush Theatre is located. The replacement roof will extend the life of a long-standing community building and will ensure local residents continue to be able to access and engage in high-quality cultural provision. The financial contribution secured from the St James development is sufficient to cover the grant amount sought.

*Planning Implications completed by Matthew Paterson, Head of Spatial Planning, email: [matt.patterson@lbhf.gov.uk](mailto:matt.patterson@lbhf.gov.uk) 4<sup>th</sup> November 2022*

## **LIST OF APPENDICES**

Appendix 1: The Community Grant Agreement with The Alternative Theatre Company Ltd (the 'Bush Theatre')

Appendix 2: Restricted enclosure