

Report to: Cabinet

Date of Meeting 14 July 2021

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Exemption applied: None

Review date for release N/A



Seaton Jurassic

Report summary:

This report sets out the current position in relation to Seaton Jurassic Visitor Centre and Devon Wildlife Trust's (DWT) proposed exit of the building on 17 September 2021. This follows the report to Cabinet of 12 May 2021 setting out next steps.

The report also details a request for capital budget to appoint external consultants to support delivery of necessary remedial works in respect of building defects.

A full options report on future uses of the building is intended to be presented to Cabinet in October and Officers will work with Ward Members and relevant Cabinet Members over the coming months to inform this.

The consultancy works in respect of the remedial works if approved will take at least 15 weeks to undertake so proposed remedial works would then be reported to Cabinet in December with contractors appointed thereafter if Council at that time were to approve a further budget.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Cabinet:

- a) Note the update contained within this report.
- b) Recommend to Council that the sum of £75,000 be made available from the Asset Maintenance Reserve to undertake the necessary investigatory works to this building to put right the defects – identifying what is needed and determining liability. The approval of additional budget to undertake the required works identified would be subject to a separate report and recommendation.

Reason for recommendation:

To update Cabinet on progress and enable the necessary building consultancy works investigating the building defects to commence through providing sufficient budget.

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Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Equalities impact Low Impact

Climate change Low Impact

Risk: Medium Risk; Without this investment, securing of a new operator or tenant will be very challenging.

Links to background information [12 May 2021 Cabinet report Seaton Jurassic](#)

Link to Council Plan:

Priorities (check which apply)

- Outstanding Place and Environment
 - Outstanding Homes and Communities
 - Outstanding Economic Growth, Productivity, and Prosperity
 - Outstanding Council and Council Services
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Report in full

1.0 Update on Next Steps Agreed at May Cabinet

- 1.1 Officers had agreed to undertake further due diligence in respect of:
 - a. The obligations and arrangements for DWT to vacate including service and acceptance of a valid break notice as permitted within the trading agreement.
 - b. The building condition and implications on future uses.
 - c. Obligations through funding agreements over future uses.
- 1.2 All 3 areas of due diligence have been needed before we can pursue interest by potential new operators or indeed commercial operators who've come forward proposing a range of very different uses.
- 1.3 DWT's occupation will end on 17th September when they vacate through termination of the trading agreement with EDDC. DWT had approached EDDC as landlord to terminate their lease early as they claim the current operation is not viable. The trading agreement that sits alongside the lease allows for their occupation to cease under certain conditions. DWT had been prepared to consider continuing in occupation but would require additional sums to help them break-even as a result of challenges with trading pre covid but also the challenges during the pandemic.

1.4 EDDC Countryside Service will look at opportunities to make some use of the building, most likely only part, once DWT have vacated and pending any new operator / tenant taking possession.

1.5 I will summarise where we are with each of the above.

2.0 Obligations and arrangements for DWT to vacate

2.1 Having reviewed the lease, trading agreement and other available documents and in readiness for a site meeting with DWT arranged for mid-May Officers pulled together and shared a list of DWT's obligations prior to exit. These items, of which there are now some 65 plus, included both documents DWT must provide but also other practical information / confirmations they must provide and addressed issues such as:

1. Legal steps needed to formally bring the trading agreement and lease to an end
2. Issues about the condition of equipment included in the lease and the condition required of these items at surrender
3. Repairing and decorating obligations on DWT before vacating including dilapidations position
4. Insurance
5. Reinstatement and removing of signage and other alterations
6. Information to be provided by DWT in terms of (as examples):
 - Underlettings / 3rd party occupations
 - TUPE considerations
 - Costs of running the Centre
 - Audited accounts as required under the trading agreement and required to evidence the validity of the break
 - Maintenance records
 - Operating licences
 - Alterations by DWT undertaken without licence
 - Fire Risk Assessment details etc
 - Details about equipment where DWT wholly own / or are sole beneficiary, equipment belonging to EDDC funded by HCF and CCF, office and kitchen equipment to be novated, and those items not to be novated and removed

2.2 Meetings have taken place with DWT between then and now and the information is now coming through. This is a complex matter – this is not only a vacant building being returned but a building set up as a going-concern and whether the broad business use itself (unchanged) is to continue at the premises is unclear. It is dependent upon demand, viability, which might be an issue for others, and also constraints attached to the premises through the original funding agreements.

2.3 My professional advice would be to market this opportunity whilst DWT are still trading but doing so once a) we have the information required above from DWT, and b) we better understand the full scale of works EDDC will be commissioning to remedy the defects outlined in section 3 of this report. This would also provide the advantage of then being able to agree with DWT - notwithstanding what the lease and trading agreement require - what we can jointly agree to remain / be taken so as to best support that new operator/ tenant. Due to the complexity of the matter and the information from DWT still required to enable the Council to do so, this is not possible at this stage. The remedial works specification will not be known until late October at the earliest and approval of the budget to undertake the works, not until December. This will impact on levels of interest and costs for both EDDC and DWT but there is no alternative. If we are in a position to do some soft market testing in August then that will assist but at this stage this looks unlikely.

- 2.4 It is hoped that by August Officers will be in a position to start working with Members to consider the options available ready for Cabinet in October. It will be late October before the consultancy work on the defects is concluded and December before any approvals are obtained. In all likelihood it will be Easter 2022 at the earliest before any new operator / tenant is in possession
- 2.5 There has been a good level of demand from others to occupy these premises and a register of all interest is being kept. The challenge however is to understand what the offering from EDDC will be – a prime example being, will it include the existing exhibits or not. Indeed some potential operators / commercial tenants will not want the exhibits. The other challenge is the overall viability of these premises both to the Council but also to any new operator / tenant.

3.0 Necessary Remedial Works

3.1 Background

- 3.2 This matter was raised in the May cabinet report but has now been investigated further as Per the agreed next steps. External advice is required now but there is a cost attached.
- 3.3 The Seaton Jurassic building has numerous issues which have caused failures of heating, ventilation, controls, internal water supplies as well as other building elements. Further breakdowns of the Mechanical and Electrical (M&E) plant and equipment is anticipated as a direct result of the intrinsic systems failures as the remaining plant is over worked while endeavouring to achieve a minimal provision.
- 3.4 These issues are affecting the efficiency and potential long-term viability of the building. Consequently these same issues will affect the viability of future potential uses and need resolution irrespective of end use, assuming of course that the building is not to be demolished. The issues were already known and were to be addressed by EDDC but in reality, over a much longer time period and with DWT still occupying.
- 3.5 The existing Tenant has given notice to leave the building and it will be necessary, inter alia, so that an acceptable commercial level of return can be received for the Council's investment and / or a new operator can provide an appropriate offering to visitors, for current defects to be made good and the building returned to a satisfactory functioning condition. These works need to be completed before any new operator / tenant takes occupation and fundamentally will improve our ability to attract interest.
- 3.6 The necessary remedial works will, together with the other factors detailed earlier within the report delay the date at which full marketing can commence. Future operators will expect assurances as to the works being undertaken but also it would now be desirable to undertake the works whilst the building is vacant. At this stage it is anticipated that the remedial works will take some nine months from the date of instruction, although the actual period will be entirely dependent on the extent of the required works following detailed investigations.
- 3.7 Had DWT not chosen to vacate then the works will likely have been undertaken more piecemeal and with the building still operating, albeit at quieter times.
- 3.8 Since opening, it is understood that some remedial works, the extent of which is to be identified, have been carried out including work after the expiry of the Defects Liability Period, but that these works have not addressed the primary issue around the design, specification and installation of the relevant equipment.

3.9 Proposed actions - Overview.

- 3.10 Going forward there are two distinct elements that need to be considered.
- Employing specialist consultants to identify the necessary remedial works and appointing a contractor to carry out and satisfactorily complete these works.
 - Employing an external legal resource to review the contractual documentation and confirm the potential liabilities and potential success of any actions, including the recovery of all reasonable costs incurred. Liaison with the contractor, their consultants, or others as applicable with the intention of recovering the cost of the remedial works should they fail to accept liability either entirely or partially.

3.11 Proposed actions - Details

- 3.12 It will be necessary for all the faults to be precisely identified by an independent external M&E specialist, and for that consultant to confirm their comprehensive recommendations for the necessary repair, replacement, and remedial works necessary to return Seaton Jurassic to a satisfactory, acceptable condition. The Property and FM Team have currently prepared an Employers Requirements document identifying the key M&E issues and faults. It is anticipated that the M&E Consultant will be able to utilise and expand this information.
- 3.13 In addition, it is also recommended that architectural investigations by an external Architect are sought in respect of the several building defects and lack of access currently available for plant to be safely serviced.
- 3.14 The combined findings from both consultants will enable a comprehensive detailed report, drawings, and associated recommendations to be prepared and finalised.
- 3.15 External legal advice will be required to determine liability (or not) on the original contractor, design team and other consultants.
- 3.16 It is recommended that as soon as the consultants' recommendations have been finalised, a tender enquiry for the remedial works is prepared and issued to suitable contractors. This will ensure that EDDC become aware at the earliest opportunity of the likely commercial cost of the remedial works.
- 3.17 It is advised that the overall period from commencement through to the completion of the remedial works could be some nine months. This assumes that a) the appointment of a contractor is not delayed through disagreements over liability for cost, and b) that the Council's decision making procedures do not cause delay in appointing a contractor following the initial work.

3.18 Costs

- 3.19 The following budget costs for the provision of external consultancies, including the legal resource, for the carrying out of the necessary investigation works and tender of the contractor who will carry out the works.

Mechanical and Electrical Consultant - £ 24,000

Architect - £7,000

External Legal Resource - £ 25,000 (for initial investigations and advice only)

Other External Consultants including Project Management £ 19,000.

Circa Overall £ 75,000. If EDDC were to progress this to litigation, legal costs would increase significantly.

- 3.20 At this stage it is difficult to calculate the likely tender cost but this is anticipated to be in the region of £100,000 - £200,000 but would be subject to a report to Cabinet in December and a further Council approval being needed.
- 3.21 Until the full details of the necessary remedial works are identified the above allowances must only be considered as provisional and subject to confirmation
- 3.22 This report seeks authority by way of recommendation from Cabinet to Council that the sum of up to £75,000 be made available from the Asset Maintenance Reserve which stands at £911,000 as at end of 2020/21 to undertake the necessary investigatory works to this building to put right the defects – identifying what is needed and determining liability.
- 3.23 At this stage it is considered that the total cost including undertaking of the physical works is likely to be circa £225,000. A further report will come back to Cabinet in respect of a budget for those works once more accurate figures are known following tender.
- 3.24 If liability on the original contractor, design team and consultants can be proven then this spend will be recovered, in part or in whole. For budgeting purposes we must assume at this stage that the cost will fall to EDDC.
- 3.25 These costs do not include 'holding costs' for this property whilst vacant which cannot be calculated accurately until further information is made available by DWT. The requirement to undertake these works is not directly linked to DWT vacating the premises but them doing so has meant that these works have now become urgent, need to be undertaken before any new tenant starts operating and cannot be spread out and dealt with in phases. Had DWT not been vacating these works will likely have been undertaken within next 2-3 years.

4.0 Obligations through funding agreements over future uses

- 4.1 40% of the £4.2m original cost of providing the centre was met from external funding. Initial discussions have been had with two of the main funders Devon County Council and the Heritage Lottery with discussions with the remaining key funders due to take place. These initial discussions have been to keep them informed of the situation and the individual funding agreements need to be considered and implications presented in the options to be presented to members.

Financial implications:

A request is being made for Cabinet to recommend to Council a budget of £75k which is to be met from the Asset Maintenance Reserve. This is a revenue budget but it can be funded from this Reserve as it was established from revenue (not capital receipts).

Legal implications:

The various legal issues are raised in the report, Legal Services are working with colleagues to minimise risk, resolve issues and to move the project forward and will continue to do so.