



16 AUG 2019

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Norrie Lyttle
Committee Services Manager
Glasgow City Council
Chief Executive's Department
40 John Street
Glasgow
G1 1JL
RECORDED DELIVERY

Our ref:
JMM BEA82/1/RJL

Your ref:

15 August 2019

Dear Sirs

Beatroute Arts, 285 Wallacewell Road, Glasgow, G21 3RP ("the CTB")
Glasgow City Council ("GCC")
Purchase of 285 Wallacewell Road, Glasgow, G21 3RP ("the Property") under the Community Empowerment (Scotland) Act 2015 ("the Act")

REQUEST FOR REVIEW OF DECISION NOTICE ISSUED UNDER THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

Background

The CTB originally made a formal asset transfer request for the Property at a price of £1 and this request was validated by GCC on 2 August 2018. That price was not accepted by GCC who then issued Draft Terms and Conditions which were wholly unacceptable to the CTB for reasons that were explained to GCC at an early stage. There then followed a lengthy period of unproductive discussions with GCC over the price and the Draft Heads of Terms culminating in us sending the letter of 3 June 2019 on behalf of our clients, the CTB. This letter set out in further exhaustive detail the reasons why the Draft Terms and Conditions could not be agreed to (but proposing alternatives) and requesting a detailed response. No meaningful response was ever received to that letter and therefore the CTB in letter dated 25 July 2019 (following earlier requests by email) pressed for such a response by no later than 9 August 2019. The letter of 25 July 2019 also proposed a purchase price of £45,000 and set out the risks to the CTB's funding that would arise from further delays. These risks had been set out in previous communications with the Chief Executive's office. GCC then issued their Decision Notice dated 9 August 2019 but did not issue any response to our letter of 3 June 2019. The Decision Notice was therefore issued just over 12 months from the original asset transfer request and accepted the price proposed by the CTB of £45,000 but with exactly the same wholly unacceptable Terms and Conditions imposed as before.

Request for review of Decision Notice

We refer to the above-mentioned Decision Notice dated 9 August 2019 and request a review of the said Decision Notice on the following grounds:-

Mitchells Robertson

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Partners

Joel M Conn
Ian C Ferguson
M Morag Inglis
Ronald J Inglis
Ross J Leatham

Martin D McLellan
Paul D Neilly

Chairman
Donald B Reid

Associates

Lauren N Booth
Kathryn A Bready
Laura C Burns
Euan F David
Allyson Gilchrist

Alison J Gourley
Joyce M Moss
Heather M Warnock

Consultants

Hugh J Grant
William M C Grant
Jan M Hynd
Neil J Mackenzie
James E Marr

Registered Office

George House
36 North Hanover Street
Glasgow G1 2AD
DX GW77 Glasgow

T: 0141 552 3422
F: 0141 552 2935
E: info@mitchells-roberton.co.uk
www.mitchells-roberton.co.uk

The term "Partner" refers to a Director of the company.

The Proposed Terms and Conditions

1. The Decision Notice contains a list of Terms and Conditions that are identical (apart from the purchase price) to those that were issued by GCC at the outset and which GCC were advised were wholly unacceptable to the CTB.
2. The Terms and Conditions attached to the Decision Notice appears to simply be a list of every possible way of protecting a disposal at less than market value and with no consideration of the particular circumstances of the CTB, the asset or previous communications made to GCC appears to have been taken into account.
3. There is no reasoning or justification for any of the items on the list of Terms and Conditions.
4. It is disputed that the Terms and Conditions attached to the Decision Notice could be considered to be proportionate for even the largest of discounts. One carefully considered method of protection could be considered to be proportionate if the circumstances (see above) demand it, but four seemingly random methods of protection with no explanation or justification for their imposition (especially when no indication of the discount that they are meant to be protecting has been given) can only be considered grossly disproportionate.
5. The impact of each of the Terms and Conditions on the ability of the CTB to raise the funds to purchase the asset has been clearly stated to GCC - they basically make it impossible - but no consideration appears to have been given to these representations regarding the Terms and Conditions.
6. Our letter of 3 June not only clearly set out the reasons why each of the proposed Terms and Condition were overly onerous and disproportionate (or probably would be disproportionate if the level of discount was known, see below) , but also suggested ways in which the asset and its use may be protected to allow both parties to proceed with a sale. We have been advised that this letter has not been given any consideration at all by GCC's legal department and fail to see how the Decision Notice with the proposed Terms and Conditions could possibly be issued without such consideration.
7. The proposed Terms and Conditions are exactly the same as were initially proposed back when the CTB first submitted their application for transfer of the asset. Our letter of 3 June 2019 to Richard Kelly of GCC's Chief Executives Department - Community Empowerment Services, explains in detail why the Draft Terms and Conditions proposed effectively render the sale to the CTB impossible. No meaningful reply to this letter has ever been received and an admission has been made that the Chief Executive's department has not been able to get anyone from GCC's legal services team to look at the. No attempt appears to have been made to find another solution, the points made in our letter appear to have just been ignored.
8. The Draft Terms and Conditions have simply been repeated verbatim in the Decision Notice. The only change to the Draft Terms and Conditions was to insert the purchase price proposed by the CTB and remove the word "draft".
9. We reject each of the Terms and Conditions proposed in points 2-4 of the document attached to the Decision Notice on the basis that it has already been explained in detail why the imposition of such overly onerous conditions means the CTB will simply not be able to purchase the asset as these conditions are not only unnecessary but are also completely unacceptable to proposed funders, a fact that has been pointed out to GCC on several occasions.

The Price/Discount

10. It is disputed whether in fact the agreed purchase price includes any element of a discount at all. The Decision Notice does not refer to the agreed price being discounted in any way or the

reason for the Terms and Conditions being proposed which would surely be the case if they were being imposed to protect a discount.

11. The Decision Notice accepts the price offered as a "modest capital receipt". It does not refer to the price as being discounted in any way.
12. Information as to the level of discount (if any) being offered was requested in our letter of 3 June 2019.
13. The DVS valuation gives the valuation of the asset with its use restricted to Community purposes as £65,000. As set out in our letter of 3 June 2019 and in the Constitution of the CTB, Beatroute Arts can only operate for Community benefit. The price offered by the CTB of £45,000 is £20,000 less than that valuation but is justified by CTB having injected capital amounting to nearly £20K (see September 2010 Bluestone Survey) over the past 9 years to bring the asset up to a reasonable standard and this is why the offer of £45K was made. To pay the full restricted valuation price of £65K would be to effectively pay for those works again. The money the CTB has invested into the asset has to be taken into account. It would be a different matter perhaps if a purchaser was coming "cold" to an asset that had not been occupied and improved by them over a period of years.
14. The difference between the valuation of £65k and the agreed price of £45K appears to have been accepted within the Decision Notice as being "in the context of the investment that the CTB has already made into the asset alongside the level of community benefits that will continue to be delivered from the asset". This does not sound as if GCC consider the agreed purchase price to be discounted and certainly the CTB did not consider their offer anything but a fair price in the circumstances.
15. GCC has not at any stage referred to a discount being offered or the way in which (if there was such a discount) GCC would consider such a discount to be best protected bearing in mind the provisions of the Act; in particular the level of discount, the value of the asset, the risk of failure of the CTB's project and the requirement for proportionality in the imposition of conditions to protect a discount.
16. Our letter of 3 June 2019 requested details of the level of any discount proposed. This has never been provided and is not addressed in the Decision Notice. It is therefore not possible to gauge the proportionality or otherwise of the Terms and Conditions proposed. If no discount is being offered for the transfer of the asset this then clearly renders each of the proposed Terms and Conditions redundant.

Timing

17. Had the Decision Notice been issued promptly (within the 6 month time limit imposed by the Act) even with the same Terms and Conditions, a review could have been requested much earlier.
18. Given the fact that GCC took an additional 6 months to issue their Decision Notice and that 6 month period appears to simply have been wasted by GCC as the parties are no further forward with the proposed Terms and Conditions, then we ask that this review be expedited so that a further 6 months is not wasted.

Summary

Given the foregoing, the CTB are firmly of the opinion that either (i) the agreed price is not discounted at all; or (ii) if such a discount has been granted, the amount has not been stated and no attempt has been made to consider the proportionate means in which such a discount (if it exists) should be protected.

The guidance to the 2015 Act sets out the criteria the relevant authority must take into account in considering the request. We would like to see a copy of the "thorough evaluation process against the pre-determined criteria" referred to in the Decision Notice specifically in relation to (i) the Terms and Conditions and (ii) the points set out in our letter of 3 June 2019.

The lack of any meaningful response to or consideration of the representations made by and on behalf of the CTB regarding the Terms and Conditions renders the entire Community Asset Transfer process meaningless and a waste of time and resources.

Had the Decision Notice been issued on 9 August after due and proper consideration of the circumstances with either no onerous Terms and Conditions or only with those in proportion and actually required to protect an identifiable discount then this letter would be an offer to purchase the asset, not a request for a review of the Decision Notice.

We therefore call upon you to review the Decision Notice and re-issue either (i) without any Terms and Conditions, on the basis that the price agreed does not represent a discount, or (ii) with proportionate and considered Terms and Conditions that do not prevent the CTB from obtaining the necessary funding to allow the asset transfer to go ahead.

Whilst the review procedure is for GCC to decide, we would appreciate this being whatever procedure can bring about the fastest decision.

Yours faithfully



As agents on behalf of Beatroute Arts

List of Documents referred to

1. Draft Heads of Terms issued by GCC
2. Emails between Beatroute Arts and COSS 16/01/2019
3. Emails between GCC and Beatroute Arts 15/01/19 to 30/01/19
4. GCC Agenda for meeting on 14/02/19
5. Emails between GCC and Beatroute Arts 18/02/19 to 23/04/19
6. File Copy Letter from Mitchells Robertson to GCC dated 3 June 2019
7. Emails between GCC, Mitchells Robertson and Beatroute Arts 02/07/19 and 03/07/2019
8. Email from GCC to Mitchells Robertson and Beatroute Arts 18/07/19
9. Emails between GCC, Mitchells Robertson and Beatroute Arts 18/07/2019 to 25/7/19 with letter from Beatroute Arts to GCC re. meeting attached
10. Emails between GCC, Mitchells Robertson and Beatroute Arts 25/07/2019 to 31/7/19
11. Email from GCC 26/07/2019 and 07/08/2019
12. Survey dated 30 September 2010 by Bluestone
13. Valuation by DVS dated 7 May 2019
14. Guidance for Community Transfer Bodies under the Act
15. Constitution of Beatroute Arts
16. The Community Empowerment (Scotland) Act 2015 – Part 5