

Richard Kelly
Grants and Initiatives Manager
Chief Executive's Dept – Community Empowerment
Services
Glasgow City Council
4th Floor, 20 Cochrane Street
Glasgow, G1 1HL

Our ref:
JMM/BEA82/1 R JL

email: [REDACTED]

3 June 2019

Dear Sirs

**Beatroute Arts (SCIO) Scottish Charity Number SC036099, 285 Wallacewell Road, Glasgow, G21 3RP
Glasgow City Council ("the Council")
Purchase of 285 Wallacewell Road, Glasgow ("the Property")**

We write on behalf of our above clients regarding the community centre at the above address. As you are aware, the community group currently lease the Property from the Council and submitted a formal asset transfer request in terms of Part 5 of The Community Empowerment (Scotland) Act 2015 last year.

You provided draft terms and conditions for the sale per the enclosed Heads of Terms. Our clients have asked us to respond to these terms as follows:-

The initial proposed purchase price was rejected by the Council. The enclosed valuation report, prepared by the District Valuer, places the market value of the Property with Vacant Possession and with no restriction on the use to which the Property can be put, at £100,000. The value of the Property subject to its use being restricted to community use only, reduces that value to £65,000. Can you please provide a figure for the proposed purchase by the SCIO with details of any discount from the value of £65,000 as soon as possible? The level of discount should determine what is required by the Council in order to protect the discount and the Property. It should be proportionate to the discount granted without being so onerous as to make the SCIO's ownership of the Property effectively worthless.

You have set out in the draft Heads of Terms various ways of protecting any discount given on the price to be paid for the Property. These include:- (i) a burden restricting the use of the Property; (ii) a clawback agreement to pay any development uplift back to the Council; (iii) a pre-emption right giving the Council first refusal on a sale of the Property by the SCIO; and (iv) a standard security in favour of the Council securing (it is assumed but not stated) either the obligations contained in the Clawback Agreement or the actual discount by way of requiring a proportion of the discount to be repaid depending on when the Property is sold on, as used to be the case for council house discounts.

After discussion with our clients and their adviser from the Scottish Land Fund, our thoughts on each of these restrictions are:-

Burden restricting the use of the Property

The SCIO appreciate that the use of the Property as a community asset should be safeguarded. However, the objects of the SCIO restrict their operations (and therefore the use of any property they occupy) to that of community benefit (see enclosed Constitution). There is therefore absolutely no risk to the Council of the SCIO then being able to use or develop the Property for other purposes. However, if the Council wished to further underline this restriction on use by making it apply also to successive owners of the Property, then they could impose a burden on the title of the Property, restricting its use in all time coming to community use. That way, other restrictions would not be required as, if a future owner wished to develop the Property they would have to ask the Council to discharge the burden and the Council could then name their price for this and so recover any discount.

Clawback agreement

As explained above, the SCIO's constitution prevents them from operating other than for community purposes. There is therefore no risk of the SCIO receiving any uplift in the value of the Property due to planning permission for development being granted by the Council so a clawback agreement for that purpose is effectively redundant.

Pre-emption right

A right of pre-emption in favour of the Council could restrict the SCIO's ability to apply for other funding. Can you please provide details of why it would be necessary for the Council to actually recover the Property, rather than it simply being sold by the SCIO subject to the burden restricting its use to community purposes only, or in the event of the SCIO's dissolution, it being transferred to another community body or charity? This other body would still be obliged to use the Property only for community purposes. If a pre-emption right could be agreed to by the SCIO, the terms of its operation would need to be set out very clearly by the Council just now and the price paid by the Council to the SCIO on exercising the pre-emption right would need to be market value without any restriction as to use. Otherwise the Council could get the Property back at a lower price and immediately discharge the burden prior to re-sale at full market value.

Standard Security

What obligations is the standard security meant to secure? If it is to protect the terms of a Clawback Agreement, it has been explained above why a Clawback Agreement is unnecessary simply due to the objects of the SCIO preventing them using the Property for anything other than community use even before a use burden is imposed on the Property. Additionally, the Council, as planning authority, have the power to deny planning permission on those grounds in the event of a subsequent owner attempting to thwart the aims of such a use burden. If a standard security is to be granted to protect the discount itself, requiring a proportionate repayment on a sale of the Property within certain timescales (as for the old council house discounts) then it will need to be made very clear at the outset what those terms are, what the amount of the discount is and when this security will be discharged in full.

However, a first ranking security could deny, or at the very least, complicate post-acquisition lending to the SCIO unless the Council agree at the outset that, if requested by the SCIO, they will enter into a ranking agreement with a further lender whereby the security in favour of the Council will be postponed to the security in favour of the lender. This will depend on whether or not a standard security is in fact required, what it secures and for how long.

Summary

There appears to be far more protection for the Council than could possibly be required and more than likely disproportionate, unless the discount is sizeable. Could you please provide details of why all of these measures might be required?

It is not possible to evaluate these measures properly without knowing what discount on the valuation of £65,000 might apply for the purchase of the Property so the provision of a purchase price as early as possible is essential in order to progress this matter.

In further support of there being as few restrictions as possible on the transfer of the Property, it should be noted that Beatroute Arts have been in occupation and delivering the benefits of their project since 2009 and the use of the Property will not change going forward. There is therefore not the same risk to the Council of the project failing to deliver its expected benefits as there might be in the case of an unknown party (without the SCIO's strong covenant) seeking to purchase the Property at a discount.

Only 25% of the cost of the services Beatroute Arts offer in order to bring about substantial public benefit to people from a recognised area of high deprivation comes from community funding from the Council. The SCIO are therefore already delivering community services at a substantial saving to the Council and have been doing so for the past 10 years. In addition, the SCIO carried out works to the Property at a cost of approx. £18,000 before taking entry under the lease in 2009. There can be no doubt that this renovation and day-to-day maintenance by Beatroute has increased the value of the Property as a Council asset. This should be taken into account in deciding what is Best Value for the Council and whether a lower asking price (without there necessarily being a discount that would need to be protected by the proposed restrictive measures), bearing in mind the efforts and financial outlay of Beatroute during their tenure so far, would not be the fairer and more transparent solution?

The legislation governing the transfer of community assets sets out the measures that a public sector organisation is entitled to employ to protect a discount on a purchase for less than market value. A discount can simply be justified by reference to the expected benefits to be delivered by the project. It is the risk of failure of the project to deliver the expected benefits that leads to these measures being imposed. The SCIO have already proved over a considerable period of time that their project is a viable long term proposal, delivering substantial community benefit for little financial outlay from the Council. The Council therefore need to consider not only what measures might be needed to protect a discount (if one is given) but whether any measures at all are in fact appropriate and justifiable.

It is difficult to judge just now how disproportionate and inappropriate the proposed restrictions on the transfer may be as the asset sale price is not known and sufficient detail on these measures has not yet been provided. However, the legislation governing Community Asset Transfers does state that the proportionality of any protective measures should take into account:-

- The value of the concession granted;
- The scale of the authority's contribution within the overall project;
- The time within which benefits are expected to be delivered;
- The need of the community body to develop in the longer term; and
- The risk that the benefits of the project may not be delivered.

We trust that this letter and the information already provided by the SCIO has set out their position and ask that the points made are given full consideration and details of the purchase price, discount and any protection that is still considered necessary, given the above, detailed in any response.

Please note that the SCIO only wish to purchase the property that they currently occupy in terms of the lease, which is shown tinted green on the enclosed plan and not as outlined in red.

Please write or email back as soon as possible with a response to each of the points in this letter and with revised Heads of Terms.

Yours faithfully