



Adur Joint Strategic Committee
12 March 2024

ADUR DISTRICT COUNCIL

Key Decision [Yes/No]

Ward(s) Affected:

Exploration of response and options available for the Old School House Motion

Report by the Director for Housing & Communities

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Executive Summary

Purpose

- 1.1. Following the recent Motion presented to this council about ESTEEM and the Old School House, officers committed to bringing back a report to Members of this committee. This report therefore sets out the options available to support ESTEEM and the motion for them to occupy the Old School House.
- 1.2. The Old School House is a repurposed residential property. The building is currently occupied by ESTEEM, a local youth organisation wanting to make the building their permanent home.
- 1.3. The report provides the necessary background information for Members, and asks Members to delegate work to officers to progress the options so that a considered decision on the future of the Old School House building can be made.

Recommendations

- 2.1. Members are asked to:
 - 2.1.1. Consider the issues in this report presented to respond to the Motion brought forward regarding ESTEEM's future use of The Old School House.

- 2.1.2.** Note the options appraisal that has been carried out and agree that officers work up the next steps and progress Option 3, as the preferred route, with Option 4 as the second option (as set out in paragraphs 4.13 below).
- 2.1.3.** To delegate the progression of this work to the Assistant Director for Regenerative Development in consultation with the Cabinet Member for Regeneration and Strategic Planning.
- 2.1.4.** In the short term to agree to enter into a fixed term lease with ESTEEM for their current occupation of The Old School House, while the council reviews available options under the Community Asset Transfer process.
- 2.1.5.** To develop a Community Asset Transfer Policy for future disposals of Community Assets both in terms of sale and lease.

3. Context

- 3.1 The Old School House was repurposed as a 'community building' many years ago and there have been several community based organisations that have leased the property since.
- 3.2 Esteem has occupied part of the Old School House since 2017, having originally licensed a few rooms from the Council's tenant at the time, Adur Voluntary Action (AVA). When AVA's lease expired in December 2018, both AVA and ESTEEM were granted Tenancies At Will (TAW,) as the property had been identified as potentially surplus to requirements. This potential was confirmed by Stiles Harold Williams, in the company's 2020 review of council properties for potential disposals. The Property and Investment Team subsequently undertook a review of this property in accordance with the Asset Management Plan (AMP) and consulted with the Communities and Technical Services Teams. This review identified the significant investment needed to continue its community use, as well as substantial limitations due to the building's inaccessibility preventing more inclusive community use. It was therefore determined that this building should be disposed of.
- 3.3 The councils' AMP includes five clear objectives to support the overarching ambitions of the Council. Proactive asset management is promoted and this includes identifying and disposing of poorly performing assets, in order to prioritise the limited resources held and 'core' estates requirements. A further

strategic asset review is currently underway, to ensure that the Council's properties are delivering and meeting the ambitions, as set out under 'Our Plan'.

- 3.4 Following the decision of disposal, council officers signalled to both AVA and ESTEEM the need to find alternative accommodation. AVA vacated the property in September 2021, following successfully securing accommodation in nearby premises provided by the Co-op.
- 3.5 ESTEEM, however, have struggled to locate a property that they feel meets the needs/wants of their organisation. Council officers have explored a number of other options to support ESTEEM, whilst not being able to act as a property agent. This has included introducing and brokering conversations with the developer of the former Adur Civic Centre site, as well as reviewing Council owned assets to identify whether there are any other buildings in the portfolio that would be more suitable. Both the Old Customs House and rooms at the Shoreham Centre were offered as alternatives, however both venues were refused as being unsuitable or were only considered by ESTEEM in addition to their current accommodation.
- 3.6 Since the departure of AVA from the building, ESTEEM has continued to occupy the parts of the building under the agreement of the TAW. They have also taken possession of the remaining areas of the building, without permission or agreement.
- 3.7 TAWs are agreements that essentially only allow basic occupation of property on a day to day basis. They are not long-term agreements and do not provide any security of tenure and so are unsuitable for occupiers, in this case ESTEEM, to attract long term funding to underpin their work.
- 3.8 Esteem only has a TAW for their original rooms however, not the rooms formerly occupied by AVA. The council may therefore retain liability for any incidents occurring within the former AVA rooms, as well as the continuing general health and safety, compliance and repairing obligations for the property.
- 3.9 In October 2022, Esteem successfully registered the property as an 'Asset of Community Value' (ACV). As set out under the Localism Act 2011 ("LA 2011"), the intention to dispose of an asset triggers the ACV 'community right to bid' process. The process allows local community groups to submit a notice of interest within the first six weeks of a six month moratorium period. This is regardless of the asset being privately or local authority owned. The property will remain registered as an ACV until October 2027.

- 3.10 In May 2023, officers met with ESTEEM to formally signal the intention to market The Old School House, and therefore this action would trigger the ACV moratorium period. Officers discussed with ESTEEM the timeline for this and negotiated to undertake the process when it was mutually beneficial. Therefore allowing sufficient time for ESTEEM to be in a position to participate.
- 3.11 Esteem have subsequently petitioned the council to remain in occupation and more recently proposed to purchase the property at a reduced value through 'Community Asset Transfer' (CAT).
- 3.12 Community Asset Transfer provides local authorities with a clear and transparent process to transfer the management of assets to community groups. This is generally through leasing at less than best value. However, it can include transferring ownership. CAT allows a level playing field for all community groups to apply to manage identified community assets. The process assesses factors such as social value provision and applicants' ability to manage assets appropriately (competent counterparties) now and into the future.
- 3.13 Whilst the future disposal route for The Old School House has been subject to discussion, it is important to note that there is a need, in the meantime, to formalise ESTEEM's current occupation. Heads of Terms were drawn up and circulated to ESTEEM for consideration. This is based on a full repairing lease for a term until December 2024. This ensures that each party is understanding of their obligations and has security, whilst the pathway for the future of the building is determined by Members. There are a number of ongoing discussions with ESTEEM to ensure that they enter into a full repairing lease for a short period until a medium/longer term solution is found. This is essential in terms of managing liabilities and also ensuring that ESTEEM is a good tenant.
- 3.14 Both Council Members and officers acknowledge the work carried out and the value that ESTEEM brings to the young people they work with and the wider community. The Adur Joint Strategic Sub-Committee accepted the motion to explore the available options, as well as setting out the resource implications arising from the Motion at its meeting in November 2023.
- 3.15 It should be recognised that the Council has played a key role in supporting ESTEEM over many years. This has included providing grants (since 2019 this has amounted to £6,000), in addition to providing rent and service charge free occupation of The Old School House for 7 years at considerable cost to the Council. Additionally the Council has had to assume responsibility for compliance matters at its own risk owing to the issues and type of occupancy.

4. Issues for consideration

- 4.1 The building itself is in poor condition. This next section breaks down some of these issues for Members' awareness. It is important to note that the property has not been included in the Planned Preventative Maintenance programme, due to full repairing leases being in place with past tenants and the decision in 2020 to dispose of the property.
- 4.2 Due to these issues there are a number of reactive maintenance costs that have been incurred and officers have been focusing on the most essential ones related to health and safety with £4,000 being spent in the last few months to address these matters.
- 4.3 A visual inspection of the property was carried out in October 2023 by the Council's Technical Services Team. It was estimated that the cost of potential repairs needing to be carried out over the next 12 to 18 months will exceed £20,000. (Please note this was a visual inspection only and costs are likely to be greater.)
- 4.4 The Energy Act 2011 introduced Minimum Energy Efficiency Standards (MEES) for non-domestic properties. Landlords must obtain an Energy Performance Certificate (EPC) in order to grant a lease on a property. Members should therefore note that leasing properties without suitable EPCs can lead to enforcement action and fines for landlords.
- 4.5 The Old School House does not comply with MEES regulations. Non-Domestic properties require a minimum E rating to be leased currently, with this requirement being raised to a C rating in 2027 and B rating in 2030. The property currently achieves a non-compliant F rating, with work therefore needed to improve this in order to enter into any lease agreement.

The estimated costs for meeting MEES legislation improvement are around £6,000, which would enable the building to be leased until 2030 under the current requirements. After that date more investment is highly likely to be required.

- 4.6 The building is also not compliant with disability access regulations. An independent Access Audit Report was commissioned in 2021. This identified lack of disabled persons access, no accessible WC provision and no easy access to upper floors. The Report identified around costs to address this being in excess of £35,000

4.7 When considering the freehold disposal of Council assets, the Council has fairly wide discretion to dispose of its assets in any manner it wishes. This is subject to statutory provisions, in particular the overriding duty under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained. There are circumstances where a local authority may consider it appropriate to dispose of land at undervalue. The General Disposal Consent (England) 2003 gives local authorities greater freedom to exercise discretion in the disposal of their land which the authority considers 'will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area'.

4.8 As stated in Section 3.9 above, The Old School House was successfully registered as an Asset of Community Value under the LA 2011. Section 96 LA 2011t, defines relevant disposal as the sale of the freehold, or grant or assignment of a lease originally granted for 25 years or more, but requires the new owner to have 100% vacant possession. Independent legal advice has confirmed that the ACV process must be followed should the Council consider disposing or leasing a property listed on the ACV register.

4.9 The process of an ACV disposal is shown below:

Stage 1	The Council would have to give notice under s95(2) LA 2011 to the listing authority (in this case the Council) of the intention to dispose of the ACV. The Council must amend its list of ACV's, notify the nominator and publicise the information in the area
Stage 2	Enter a 6 week moratorium period where any community interest groups can serve an Expression of Interest (EOI) on the Council in writing.
Stage 3	Assuming an EOI has been received from a community interest group of their will to be treated as a potential bidder, the Council would trigger the full six month full moratorium period from the notification date of the proposed disposal.
Stage 4	During the full moratorium period, community interest groups are given the opportunity to prepare a business plan and raise funding. This includes the groups financial viability and experience in maintaining the asset and its community use going forward.
Stage 5	The Council can negotiate a sale with a community interest group and if the sale is agreed can sell and complete within the six month full moratorium period <u>or</u> continue to market and negotiate open market sales. However, cannot enter into a binding contract or exchange contracts until the end of the six month FULL

	moratorium period.
Stage 6	Once the period of FULL moratorium has been served the Council can dispose of the property to whoever it chooses.
Stage 7	<p>The protection period provides for 18 months from the date notice is received on the intention to dispose of the property. There can be no further moratoriums during the protected period.</p> <p>If a disposal cannot be completed within the protection period and there was still an intention to dispose of the property then this would re-trigger the moratorium period and essentially start the process again.</p>

4.10 The Council does not currently have a Community Asset Transfer (CAT) policy, however it is still possible to run a CAT policy parallel to the ACV process. A CAT is widely recognised as best practice in managing Community Asset disposals and sets out a framework to support the transfer of assets in a fair, open and transparent way. The process the Council would follow for a CAT is detailed below:

Stage 1	<p>Expression of interest made from an applicant identifying the building that they are interested in.</p> <p>Applicants would need to provide the following information:</p> <ul style="list-style-type: none"> ● Summary of where their organisation is currently based. ● Organisational purpose. ● Services they offer. ● Details of the building they are interested in and why. ● Type / Length of tenure required. ● Explanation of why they are applying for CAT.
Stage 2	<p>Invitation given to progress to Stage 2 following consideration of the above.</p> <p>Further information to be submitted would include:</p> <ul style="list-style-type: none"> ● Full details on intended use. ● How the building is intended to be used to raise additional funds and achieve additional social value. ● Full details of how and when those benefits will be achieved, monitored and reported to the Council. ● Evidence to support a local demand for the service. ● Full details of the organisation's experience in managing property and providing intended service. This will include governance and constitution arrangements. ● Full details of the business case/ plan that covers

	occupation and use for the intended lease period or first 5 years following transfer whichever falls sooner.
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4.11 The Council motion to retain ESTEEM within The Old School House building does not align with a usual Community Asset Transfer approach i.e. because this could affect other community organisations opportunity to participate in a CAT approach, given that ESTEEM are currently occupying the building.

4.12 Normally, the Council should be led by an up to date asset management plan and supporting policies e.g. CAT. This facilitates good working practices and clear decision making without prejudice. Owing to an out of date asset management plan without support policies, officers have been working to establish how this process can allow fairness, transparency and equity for all community groups in line with an AMP and CAT policy.

4.13 Options Appraisal

There are a number of options for members to consider, which are illustrated below:

Option 1 - Status Quo

This option would see ESTEEM continue to use the building in its entirety without any legal agreement in place.

Advantages	Disadvantages
None.	<ul style="list-style-type: none"> ● Council remains liable for Health & Safety, Compliance for parts of the building. ● No enforceable lease terms. ● Council remains financially liable for the upkeep and maintenance of a building in poor repair. Significant capital investment is needed to ensure this building is sustainable. ● TAW is inappropriate and has no legal basis for long term occupation. ● ESTEEM risks withdrawal of core funding from external funders with a TAW agreement in place to deliver their services.

	<ul style="list-style-type: none"> ● ESTEEM has no security of tenure under a TAW. ● Council would have to invest in disabled access provision
<p>Further Consideration</p> <p>We need to ensure that any group using this building is a competent counterpart (i.e has the requisite skills and experience to hold a lease) and this needs to be tested through a CAT process.</p>	

Option 2 - Freehold Disposal for Best Consideration (Market Value)

Advantages	Disadvantages
<ul style="list-style-type: none"> ● Providing a capital receipt to Council to support the Council's reserve position. ● A capital receipt could be reinvested into other programmes of work or into buildings, which are fit for purpose, accessible and sustainable. ● Reduce the call on Council finances to maintain a poorly performing asset. ● Redirect officer resources into other community and property projects/ initiatives. 	<ul style="list-style-type: none"> ● This provides no certainty that ESTEEM will remain in occupation due to the ACV/ CAT process (ESTEEM could not meet the market value). ● The capital receipt monies may not be ring fenced into the purchase of another community asset and therefore this would reduce the community assets available. ● The property could be leased for a commercial interest albeit the nil or low rental income is forgone. ● The Council loses control over the asset and its use. If sold to a community group, this will include losing control of ensuring that the purchaser's competence and ability to maintain and run the community asset thereafter.
<p>Further Consideration</p> <p>To understand the true market value, this building would need to be placed on the open market.</p>	

In November 2022, two local estate agents provided a suggested starting asking price of £500,000. This was to convert the property back into residential use.

A claw back provision could be included in a transfer, should the property be sold in future or community use was ended. This would be by way of overage to provide a cash sum in the event of a change of use, for example.

Option 3 - Freehold Disposal for Less than Best Consideration (Community Asset Transfer for less than a market value)

Advantages	Disadvantages
<ul style="list-style-type: none"> ● Providing a capital receipt to Council to support the Council's reserve position. ● A capital receipt could be reinvested into other programmes of work or into buildings, which are fit for purpose, accessible and sustainable. ● Reduce the call on Council finances to maintain a poorly performing asset. ● Redirect officer resources into other community and property projects/ initiatives. ● The building would remain within community ownership. ● If successful, ESTEEM would have full control over the asset to continue their services for the local community. ● Community based ownership could unlock grant funding to improve the fabric of the building. 	<ul style="list-style-type: none"> ● This provides no certainty that ESTEEM will remain in occupation due to the ACV process. ● Reputational risk to the Council if a transfer is perceived to be carried out without a fair, transparent process for all community groups. ● The capital reduced receipt monies may not be ring fenced into the purchase of another Council community asset and therefore this would reduce the assets available. ● The Council would forgo being able to gain a rental income from the property (commercial or community). ● The Council loses control over the asset and its use. This will include losing control of ensuring that the purchaser's competence and ability to maintain and run the community asset thereafter. ● There is no guarantee the ESTEEM or the successful community organisation could raise the funding for the purchase of the building, even at an undervalue.

<p>Further Consideration</p> <p>There are several considerations to be made in determining the undervalue disposal of a building:</p> <ul style="list-style-type: none"> ● To understand the true market value, this building would need to be placed on the open market. This would confirm the position on which to base the undervalue decision. ● ESTEEM are not in a position currently to provide a suggested purchase price, due to the way in which they will need to raise the finances for purchase and an assessment on the likelihood of this needs to be made. They have however shared that they are confident that they could raise funds for these purposes. ● Without a CAT policy in place there are difficulties in accessing the social value of the organisation wishing to purchase and therefore justifying and undervalue calculation. <p>Restrictive covenants should be included within the conveyance to ensure continued community use of the asset.</p> <p>A claw back provision could be included in a transfer, should the property be sold in future or community use was ended. This would be by way of overage to provide a cash sum in the event of a change of use, for example.</p>	

Option 4 - Long Term Lease

A long-term lease may be defined as one not less than seven years in length. A lease of this length or more would require registration with HM Land Registry by the tenant.

Lease terms can be negotiated and include:

- A tenant obligation to put the asset into repair or carry out work to improve accessibility.
- Repairing obligations for each party. A long term lease should include a full obligation by the tenant to repair and keep the property in compliance with all statutes and regulations.
- Provision can be included to ensure ongoing community use of the asset, for example break provisions to take back the asset if necessary.
- Safeguards to ensure continued occupation, for example excluding subleases or selling the leasehold interest.

Advantages	Disadvantages
<ul style="list-style-type: none"> ● Reduce the call on Council finances to maintain a poorly performing asset. ● The council's repairing obligations and other liabilities, including health and safety and financial, are minimised to provide revenue and capital savings. ● Redirect officer resources into other community and property projects/ initiatives. ● The building would remain within Council ownership and stewardship, safeguarding it for future projects/ initiatives. ● ESTEEM could be granted a lease and have control over the asset with Council stewardship. ● This would provide certainty for ESTEEM to continue occupation and delivering/ growing the services it provides for young people. ● Long term CAT transfer via lease could unlock grant funding to improve the fabric of the building, reducing the Council's call on capital resources. ● The Councils could consider a rental income from ESTEEMs occupation. ● The council resumes control of the asset on expiry of the lease and therefore is able to be let to another community group or a commercial tenant 	<ul style="list-style-type: none"> ● The capital receipt monies would not be received. ● The Council would forgo being able to gain a commercial rental income from the property. ● May include (depending on terms) continuing Council resources into property and community management of the building (stewardship).
<p>Further Consideration</p> <p>Long term leases to community based organisations should be subject to a CAT process to determine suitability, sustainability and calculating a reduced rent.</p>	

Can ESTEEM be regarded as a competent counterparty capable of holding a lease. Their current occupation has been through default and concerns have been raised through their use of the building (fire risk assessment, maintenance, unapproved works carried out and unauthorised occupation).

Option 5 - Short Term Lease

A short term lease is deemed to be less than 7 years and not required to be registered with HM Land Registry.

In addition to the advantages and disadvantages of the long term lease option, the following represent a short term lease option.

Advantages	Disadvantages
<ul style="list-style-type: none"> ● Council retains more control over the assets future, giving flexibility to review the future of the asset when it expires. ● Tenants are more likely to look after properties for short term lease as there is no guarantee of long term occupation. ● More consistent with a CAT policy for leasing, allowing review of applications from other groups who may be interested in the property and have property requirements. 	<ul style="list-style-type: none"> ● Short lease duration may restrict the tenant’s ability to fundraise and keep the building in repair. ● Tenants are less willing to invest and carry out repairs/ improvements when there is a shorter tenure. ● Council retains compliance responsibility depending on the terms negotiated.

Further Consideration

Short term leases to community based organisations should be subject to a CAT process to determine suitability, sustainability and calculating a reduced rent.

Can ESTEEM be regarded as a competent counterparty capable of holding a lease. Their current occupation has been through default and concerns have

been raised through their use of the building (fire risk assessment, maintenance, unapproved works carried out and unauthorised occupation).

5. Engagement and Communication

- 5.1 Officers from Estates and Communities have been in constant communication with ESTEEM, the current occupier, to advise them of the intention to dispose of the property. Officers have also held a number of meetings with the tenant to discuss matters arising from this.
- 5.2 Officers have also engaged Technical Services in respect of the use and maintenance for the property.
- 5.3 Professional external legal advice has also been sought around the ACV process, in addition to the Council's legal team consulting on this matter.
- 5.4 Interested community groups and organisations through the ACV process will have the opportunity to submit an EOI to be considered to purchase the property.
- 5.5 This committee, alongside Ward Councillors and Cabinet Members will need to be updated with progress when developing the agreed option.

6. Financial Implications

- 6.1 The options appraisals for the building are set out in section 4.13 of the report.
- 6.2 The proposed preferred option 3 of a Freehold Disposal for Less than Best Consideration (Community Asset Transfer) has the advantage of providing the council with a capital receipt albeit reduced as through a CAT process. The actual level of receipt is not known and to understand the true market value, this building would need to be placed on the open market. There would be a cost associated with commissioning this exercise.
- 6.3 Option 3 would also reduce the cost to the council of maintenance and repair of the asset. However, it should also be noted that the council would forgo the opportunity to invest in the asset and gain rental income from alternative lease opportunities. The cost/benefit of this would need to be investigated further to form a financial view.

7. Legal Implications

- 7.1 Local authorities are given powers under the Local Government Act 1972 (“LGA 1972”) to dispose of land in any manner they wish, including the sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable in accordance with Section 123 LGA 1972
- 7.2 However, it is recognised there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue (where the disposal does not exceed two million pounds. Guidance is contained in [General Disposal Consent \(England\) 2003](#) which provides the specified circumstances where a local authority may sell at under value namely where the disposal would contribute to the “*promotion or improvement of economic well-being, social well-being and / or environmental well-being*”
- 7.3 The ACV process which the Council must adhere to is specified in Chapter 3, Sections 95 to 98 LA 2011 and The Assets of Community Value (England) Regulations 2012

Background Papers

- [Background Information on Assets of Community Value & Right to Bid Process](#)
- [Joint Procedure for administering Assets of Community Value](#)
- [Asset of Community Value Register](#)
- [Property Asset Management Plan](#)

Sustainability & Risk Assessment

1. Economic

This recommendation has positive economic impact, as it releases capital from a property requiring increasing maintenance and larger capital investment to sustain its current use. It should be noted that if the property is sold at an undervalue, the capital return would be substantially reduced and therefore the reinvestment into Council services would be less than selling the property at market value. Holding costs (security, insurance and rates) will be payable if vacant and if sold would be saved.

ESTEEM, should they be in a position to purchase the property would be able to apply for external grant funding and continue community use.

2. Social

2.1 Social Value

This would be positive for the wider Shoreham community as it will bring a property in need of updating and refurbishment into a more sustainable use.

The current occupier's activities cover a wider geographical area and are therefore not exclusive to the Shoreham community. This building currently acts as a central hub for all its service users.

Council control over the use of the asset will be lost however, should ESTEEM cease to operate at the building.

2.2 Equality Issues

The current occupier's service could move to a more suitable location with improved access. The asset does not conform to modern accessibility standards. Access and participation with all groups will therefore be restricted.

2.3 Community Safety Issues (Section 17)

Matter considered, no issues identified

ESTEEM will continue to work and engage with young adults aged between 14 and 26 years old.

2.4 Human Rights Issues

Matter considered, no issues identified

3. Environmental

Matter considered, no issues identified

4. Governance

This report aligns with the aims of the medium term financial strategy and the Council's current AMP.

There is a risk that the recommendation may set a precedent for similar applications to purchase assets at an undervalue or that ESTEEM has been favoured over other community groups in need of property.

The recommendation removes any potential health and safety liabilities by transferring ownership and management of the building. There may be reputational risk if ESTEEM is incapable of managing the asset going forwards.