

COUNCIL

<i>Report to</i>	COUNCIL BRIEFING
<i>Report of</i>	CHIEF EXECUTIVE
<i>Date</i>	14 NOVEMBER 2018
<i>Subject</i>	LANCASTER MUSICIANS CO-OPERATIVE: BUILDING AT 1 LODGE STREET LANCASTER

The Motion

This Council resolves that:

- 1. The eviction notice issued to the Musicians' Co-op on Friday 12th October is immediately rescinded.**

The notice to quit served on Lancaster Musicians Co-operative (the Co-op) is designed to limit and prevent accrual of liability to the Council. The notice reflects a serious concern in respect of public safety. In any of the likely longer-term solutions the tenancy at will must be ended. The closure of the building is required for public safety and the notice to quit is a first step in that process.

- 2. An urgent meeting between the Musicians' Co-op and the Council, including interested Councillors, is arranged to review the situation, and explore possible future arrangements that support the long-term future of the Co-op.**

This has been undertaken at a meeting held on 5 November (refer to note of meeting in Appendix 5) and has identified that the Co-op does not have access to funding to meet the recommendations in the report and is currently unable to ensure the welfare of visitors.

There is no current Council policy objective prioritising the Co-op, nor any budget framework in place justifying the public resources used to support the organisation to date or any that may be applied in future. The Council can help facilitate a review of available / suitable premises which can be used as a short-term alternative to support the Co-op's critical business needs and assist the company to maintain its service. This can be undertaken pending a wider review and consideration of how musical endeavours in Lancaster can be supported by the Council in the medium to long-term.

- 3. An action plan is formulated to address the building condition report issues and how best the funds to pay for them could be raised, with the Council accepting responsibility for the most significant urgent structural repairs needed to make the building safe. This acknowledges the Council's position as landlord and the many years of uncertainty that the redevelopment proposals have cast over the future of this building and the wider area.**

There is no repairing obligation on the Council in the tenancy agreement. The Co-op are authorised to carry out repairs as they wish for the benefit of their occupation. The opinion of officers is that insufficient repairs have been carried out to keep the building safe.

Based on recommendations of the Cabinet report dated 18 October 2005, it was resolved that a lease would not be granted. No later formal decision concerning the matter has been identified, and the Co-op has known of the need to move premises since 2005.

From the meeting on 5 November officers concluded that the previously issued notice to quit should remain in place and advice was given to the Co-op that the building should be closed to the public. The immediate requirement is to ensure the welfare of the public by restricting access to the building. This will allow continued discussions and consideration of actions without present risk to public safety.

4. If the Musicians' Co-op has to move out in the short-term for repairs to be carried out, then the Council will work with the Musicians Co-op to find suitable alternative premises close to Lancaster City Centre.

The Council can assist with reviewing and helping to develop options for short-term alternative premises to support the critical business needs of the Co-op with the intention that some continuity in the service offer is maintained. As previously stated above, this can be undertaken pending a wider consideration of how musical endeavours in Lancaster can be supported by the Council in the medium to long-term.

However, the affordability and suitability of premises is ultimately a matter for the Co-op as an independent company and business. If the Council is to assist, the Co-op needs to define what their critical needs and requirements are as a property end-user and service deliverer. A specification has been requested by officers but, at the time of writing, this has not been provided. A meeting has been arranged between officers and Co-op representatives for 21 November to discuss their critical needs, this being the earliest date the Co-op could be present.

The immediate availability of suitable property, whether through consideration of the Council's own available assets or third-party assets, is limited by several factors. These include but are not limited to: market rental values and other costs; suitability of the premises for the intended use; costs to bring premises into the desired use; neighbourly matters and amenity; the nature of any existing covenants and restrictions; consideration of existing user groups and bookings.

Should the operation at 1 Lodge Street have to cease it is inevitable that the Co-op's business continuity will be affected. However, officer resources have been committed to work with the Co-op to investigate options and mitigate any break in service continuity as far as is reasonably practical under the circumstances.

1 PROPERTY AND LEGAL MATTERS

Property Issues

- 1.1 The Council undertakes condition surveys of its operational property every five years. In 2018, to obtain a complete picture across its portfolio, the Council included all non-operational buildings in the survey programme. The subsequent condition survey of 1 Lodge Street raised several critical concerns around the immediate condition of the building which led officers to conclude there is a serious risk to the health and safety of the building users. A further independent

report was commissioned and is attached in Appendix 1.

- 1.2 Under the terms and conditions of a tenancy at will dating from 1985 (see Appendix 2 Tenancy Agreement), the Co-op has repairing and public liability insurance responsibilities for the building for the benefit of their occupation. The tenancy agreement states that the occupier indemnifies the Council against all legal liability from claims in respect of injury/accident arising from the tenant's occupation.
- 1.3 Following receipt of the independent report a well-documented and transparent series of communications and meetings were undertaken with the directors of the Co-op and their representatives (summary timeline attached in Appendix 3). A review meeting between officers, the Co-op and their representatives on 1 October 2018 (refer to note of meeting Appendix 4) clearly laid out the measures required to make the building safe. Officers also requested evidence that the Co-op's insurer had been made aware of the condition report because of doubts as to whether the Co-op's ability to indemnify the Council was compromised or invalidated by a potential omission.
- 1.4 The Co-op provided some information to the requests arising from the October meeting. However, officers considered the response insufficient. With knowledge of the Co-op's stated repair schedule, doubts over insurance validity and the present health and safety risks the Council had no alternative but to act. The Co-op was therefore served with 6 months "Notice to Quit", with the Council reserving the right to withdraw the notice should the required building work be undertaken, and evidence provided that adequate insurance is in place. This was considered an important formal step for the Council to set out a clear and unambiguous position which provided a clear timeframe for action. The notice provided an imperative for all parties to work together to resolve issues in the short-term.
- 1.5 At a follow up meeting with Cabinet Members and officers on the 5 November 2018 (refer to note of meeting in Appendix 5), a Co-op representative stated that, following their own legal advice, they considered responsibility for repair of the building rested with the landlord and that they did not accept responsibility to maintain the building. This has created a critical legal uncertainty.

Legal Issues

- 1.6 The critical facts for consideration from a legal perspective are:
 - The Co-op is the occupier of the building. There is no repairing obligation on the Council in the tenancy at will agreement.
 - The ability to carry out repairs as they wish, for the benefit of their occupation, rests with the Co-op.
 - The building has been allowed to fall into such a state of disrepair that it is hazardous to any users.
- 1.7 The Co-op were informed as early as July 2018 that the building was in poor condition and have been advised that the public should be excluded until the most urgent remedial works are completed. The Co-op have been required on several occasions to provide evidence that there is adequate insurance for the potential liability in the event of a mischance and have currently failed to do so. However, as a matter of principle, it is better to act in the interests of public safety and prevent harm rather than looking to an insurer to pay for the harm done.

1.8 Members should be aware of the following critical liability issues:

- *Civil Liability:* The Council should act to protect the public. This is achieved by preventing the occupiers from allowing, permitting, encouraging, and charging a person to use that property. The Council is fully aware of the state of the building and, even if there is adequate insurance, it is better to act in the interests of public safety and prevent harm rather than looking to an insurer to pay for the harm done. If the insurance provision is not adequate, the Council may be considered by any claimant to be the defendant of choice rather than an impecunious co-operative.
- *Criminal liability:* this reflects the principle that the prevention of harm to a person is better than compensation. This underpins health and public safety requirements. If the Council knows the building is hazardous, has the ability or duty to mitigate that hazard and decides to do nothing, the appropriate prosecuting authority may consider that act or omission to act worthy of further consideration.

1.9 Given that the Co-op does not accept responsibility for the repairs to the building, and the Council does not accept this position, legal uncertainty has been created. If the Co-op's assertion is correct the landlord must take immediate steps to reduce the risk of harm to the public and close the building. As the agreement is a tenancy at will this can, and must, be done swiftly as the welfare of the public should be the paramount consideration of the authority.

1.10 If the building is hazardous the public should be excluded until it is remedied. If the Co-op is unwilling to exclude the public, the Council should take all reasonable and proportionate steps as landlord to ensure public safety. It does this by setting a time limit for the occupiers to comply with repairs, excluding the public or ensuring the building is vacated.

1.11 Additional legal opinion is being sought on liability issues and will be shared with Members when available.

2 GOVERNANCE MATTERS

2.1 There have been at least two significant decision made in respect of The Co-op's occupation of 1 Lodge Street:

- Resolution of Council dated 11 December 2002 for the Council to grant the Co-op a lease of their premises to replace the existing tenancy at will.
- A Cabinet report titled "Canal Corridor, Lancaster Development Options" dated 18 October 2005 and resolutions (Minute reference 76) stating:

(1) *That the issues affecting the various City Council properties be noted and that the proposal to grant a lease to the Musicians Co-operative be rescinded and that the premises be included within the development subject to replacement facilities being provided as part of that development.*

(2) *That every effort be made to provide alternatives for all business affected by the development and discussions be commenced about their future as soon as possible.*

- 2.2 This continues to be the Council's formal position. Following these resolutions discussions were held between the Council's then development partner, Centros Miller, and the Co-op. Discussions continued through subsequent iterations of the regeneration scheme up to and including the most recent proposals developed by British Land. As a viable development scheme did not materialise no decision was taken on either the premises/site at 1 Lodge Street. This in turn meant there was no progression on options for alternative/replacement premises.
- 2.3 The Council has taken more recent decisions on progressing a regeneration scheme for the area, now renamed Canal Quarter, following the ending of the formal developer partner relationship with British Land. No decisions have been made on sites/premises under these emerging plans (refer to paragraph 4.5) and positive meetings have been held between officers and the Co-op's representatives to keep them informed. However, the progression of the strategic Canal Quarter plans is a separate matter to the resolution of the immediate building safety issues.
- 2.4 The consideration for the tenancy at will was agreed in 1985 is set at an £200 pa. It was recognised at the time of the agreement that the building needed repair and was potentially required for future reconstruction or demolition. The short-term nature of the agreement provided for the Co-op to repair the building "as it may wish" on the understanding that a heavily discounted rent would provide a basis to support the business operation and provide capacity for business-critical maintenance and repair.
- 2.5 Over the past decade the Rateable Value (RV) of 1 Lodge Street has been independently assessed by the Valuation Office at around £12K pa. As RV is an estimate equal to the rent at which the property might reasonably be expected to let year on year, it provides an illustration of the effective subsidy benefit secured by the Co-op over the period of their occupancy.
- 2.6 Alongside a subsidised rent, the Co-op benefits from statutory small business rate relief (introduced in 2005) and discretionary rate relief (the Co-op being eligible as non-profit making organisation). In 2018-19 the rates payable on 1 Lodge Street were £5,880; small business rates relief reduced this amount down by £5,390 to £490. 80% discretionary rates relief brought that figure down to £98.
- 2.7 In broad terms a building benefit "in-kind" has been provided outside of a transparent or accountable framework and there has been no review of the situation since 1985. There are currently no defined policy outcomes against which the effectiveness of the subsidy can be measured.
- 2.8 Any use of public resources should be able to evidence best value/value for money for the public purse. In making a financial commitment the Council would ordinarily define the following:
- Its aims and objectives in supporting the activity;
 - The critical infrastructure and assets required to meet demand / need in the short, medium and long-term while being mindful of the constraints and opportunities;

- Developing costed capital/revenue business plan options for structures to deliver and operate publicly financed activity on a sustainable basis;
- Whether provision of any Council investment (in-kind, cash or both) is both affordable and linked to specific outcomes which deliver against Council priorities in the Council Plan.

2.9 If the Council wishes to formally support musical endeavours, officers can be asked to report to Cabinet and evaluate the options and resources needed to deliver the desired outcomes. In developing an approach and defining the objectives for its intervention the Council could work with the Co-op and the wider community of musicians, local music professionals and stakeholders, to develop a sustainable solution to meet local needs.

3 LANCASTER MUSICIANS CO-OPERATIVE

- 3.1 The Co-op dates to 1985 with its initial funding originating from a North West Arts Council grant. Founding as a mutual organisation and registered as a bona fide co-operative society with community benefit, there are three registered director / members. The business model is underpinned by the Council providing a rent at substantially below market value. The business operates rehearsal rooms and a recording studio for use by the local community and their stated aim is to offer affordable rehearsal rooms and equipment hire. They are non-profit making and their stated aims are to use surplus income to buy new equipment, keep costs to local musicians as low as possible and cover repairs. The beneficiaries of the Co-op, by the definitions contained in its constitution, are its three member/directors.
- 3.2 Two of the directors also act in the position of full and part-time operational staff drawing a salary from the company. As at September 2017 the company had annual turnover/revenue of £31,114, disbursing £31,047 in administrative expense, with total current net assets of around £1.6K.
- 3.3 From publicly available information the current operation provides: 3 x rooms for rehearsing; 1 x room for studio recording with a separate studio suite; an administration office; a large amount of equipment for hire; and extensive ancillary storage facilities some of which can be hired by bands. An extensive upper floor area was previously used as artist studio space but ceased due to leaking roof. This space is now unusable for beneficial commercial occupation, although the Co-op still uses the space for storage.
- 3.4 The tenancy at will was recognised by both parties as 'temporary' and agreed in full knowledge of the building situation and without compulsion. The agreement is determinable at the will of either party. The benefit of the tenancy structure gave the Co-op the highest degree of flexibility to search for and secure alternative premises from which to deliver services, but they have chosen not to do so.
- 3.5 The Co-op has not provided for sufficient building maintenance, professional assessments or monitoring/servicing activity in its day to day operation. The Council has stressed the value of the Co-op's services to community and cultural life and has stated its desire to work with the Co-op to resolve issues. However, it is clear the organisation's strengths and competencies are not in day-to-day building and property management.
- 3.6 The business has retained the same member/director mutual structure for some

time which, in the context of current best practice in the field of social enterprise activity, is a relatively closed arrangement. The community of users does not have a formal stake or say in building management or operation and there is no obvious formal mechanism for them to become involved in the operation or hold the management team to account. However, it is understood that the current issues have acted as a catalyst for the Co-op in terms of generating offers of in-kind professional support into both reviewing the business structure and bringing other practical support into the operation.

- 3.7 The building itself requires significant capital spend to stabilise the situation and make the building safe for use in the short to medium term. The Co-op's current crowd-funding effort on the back of a well-publicised petition and campaign stands, at the time of writing, at approximately £1.9K. While a creditable and useful amount to have been raised in a short-timescale, it does not come near the funding required to be spent on the building to secure it for safe current use.
- 3.8 Officers have estimated the costs of the "essential" stabilising building repairs necessary to bring the building to safe standard for beneficial occupation in the short to medium term. The immediate work required is mainly roofing and electrical works at an estimate of around £120K, although the estimated price has caveats. Some critical elements are further detailed investigations which could result in additional urgent work being required. With the consideration of professional fees and contractor overheads the works could easily come to £200K, and potentially more. Even if funding is made available the nature of the works would require the building to be vacated.

4 CONSIDERATIONS FOR THE CITY COUNCIL

- 4.1 The immediate issue is the continued use of the building in the light of an independent building survey report and the legal uncertainty over property liabilities. The Council must therefore take reasonable steps to ensure public safety.
- 4.2 Members will recognise that the Council's property team is highly qualified and competent in the specialist area of building maintenance, management and safety. The current information available and action undertaken is a product of the Council's focus and desire to secure its property assets and to take appropriate and proportionate action where there are serious problems identified.
- 4.3 The building must be closed - if not by the Co-op then by the Council.
- 4.4 Given the cost of repairs required the Co-op is unlikely to be able to fund those elements required to make the building safe for ongoing beneficial use. Consideration of whether the Council should make any substantial investment in the building should form part of the budget process, be informed by a review of what it seeks to achieve from any investment and be subject to the usual safeguards on transparency and scrutiny.
- 4.5 Members will consider a separate update report on the Canal Quarter at 14 November Council meeting. It can be stressed that no decisions have been made on any aspect of the Canal Quarter plans outside those authorities granted to officers under the resolutions made at the meeting of Full Council in July. The

high-level Development Framework is due to be completed for consideration by Canal Quarter Cabinet Liaison Group in December

- 4.6 There is no decision on the long-term future of the building at 1 Lodge Street within the regeneration plans. Neither will anything be settled with the production of the initial Development Framework ideas which will be revisited through a process of wide and comprehensive public and stakeholder engagement. It is therefore difficult to assess the costs and benefits of any substantial and immediate investment in the building. If substantive repair work to the building is funded the investment may be premature in the light of alternative uses for the building or site which may better contribute to the overall regeneration scheme objectives.
- 4.7 The Council can assist with reviewing and helping to develop options for short-term alternative premises to support the critical needs of the Co-op and music community to maintain some continuity in the service offer. This can be undertaken pending a wider consideration of business models and how the musical endeavours in Lancaster can be supported in the medium to long-term. However, the affordability and suitability of premises is ultimately a matter for the Co-op as an independent business. If the Council is to assist, the Co-op needs to define what their critical needs and requirements are as a property end-user and service deliverer. A specification has been requested by officers but, at the time of writing, this has not been provided. A meeting has been arranged between officers and Co-op representatives for 21 November to discuss their critical needs, this being the earliest date the Co-op could be present
- 4.8 The immediate availability of suitable property, whether through consideration of the Council's own available assets or third-party assets, is limited by several factors. These include but are not limited to: market rental values and other costs; suitability of the premises for the intended use; costs to bring premises into the desired use; neighbourly matters and amenity; the nature of any existing covenants and restrictions; consideration of existing user groups and bookings.
- 4.9 As the Co-op's operation at 1 Lodge Street must cease immediately a break in service is inevitable. However, officer resources have been committed to work with the Co-op to investigate options and mitigate any disruption as far as is reasonably possible in the circumstances.

5 CONCLUSION

- 5.1 Officer advice on Motion are is:

Rescinding the notice to quit: Rescinding the notice is not recommended. It should remain in place to provide a foundation and framework for the Council to act to secure the safety of building users. The notice should be left unchanged until the recommendations in the building condition report are satisfied and the issues raised in the briefing are resolved.

The Council Meets with the Co-op for review of the situation and long-term options for the Co-op: The meeting has been undertaken and the situation is clear as outlined in this briefing. The Council can however, work with the Co-op on short-term measures to mitigate service disruption. Council can also indicate whether it wants officers to work with the Co-op and wider community of musicians

and stakeholders on options/alternative to support musical endeavours on a more strategic medium and long-term basis.

The Council accepts responsibility for the building condition and formulates an action plan: The Council is not responsible for the current building condition which has been left in a poor and hazardous state of repair. The Co-op has been the occupier for the last 33 years and, as such, is responsible for the welfare of visitors and users on the premises. As the building is in a hazardous state and there is legal uncertainty, it must be closed to the public.

Advice can be obtained from Property Group to assist with this process, but the available scenarios are as follows:

- a) The Co-op closes the building, accepts building liability / responsibility and undertakes to deliver the minimum repairs that are necessary.
- b) The Co-op does not close the building and the Council takes steps to ensure the welfare of the public.
- c) The Coop closes the building and agrees to work with the City Council to identify future sustainable options for the delivery of support to musicians in our district.

Any future provision of Council funds for building repair should be considered as part of budget framework with full consideration of the objectives and affordability of providing investment, alongside consideration of the wider uncertainty in the current stage of development of the Canal Quarter regeneration plans

The Council works with the Co-op to find suitable alternative premises close to Lancaster City Centre. Following resolution of the critical building issue, the Council can work with the Co-op to help address its immediate issues around business and service continuity. However, the availability of suitable property, is a constraint which will inevitably lead to some disruption.

- 5.2 In the event of a challenge to any decision, or if it becomes necessary to prove the resolution of Council at a later date, a recorded vote will assist.

SECTION 151 OFFICER'S COMMENTS

The report clearly sets out the overriding imperative to protect public safety and this can only be achieved by the closure of the building until adequate repairs can be actioned.

The legal uncertainty set out in para 1.5 and the potential civil and criminal liability set out in para 1.8 should be a key consideration in any Council decision.

In terms of financial issues, paras 2.8 and 2.9, provide guidance with respect to how the Council might work for a longer term sustainable solution if they wish to provide support to the musical sector in the District having regard to priorities and the Council's own finite resources.

MONITORING OFFICER'S COMMENTS

The Council must ensure the welfare of the public. The current state of the building, the impending inclement weather and potential for harm leaves no alternative but the closure of the current venue.

Council is free to consider future support of and methods of delivery of support to musicians in the district if they wish. This would benefit from clarity on policy objectives and funding. The provision of public funds to any organisation requires transparency and accountability for the use of those funds with proper budgetary scrutiny and review.