CABINET MEMBER DECISION

Date of decision – 8 September 2017

Severn Arts (Worcestershire Youth Music) – potential establishment as a Charitable Company Limited by guarantee

Relevant Cabinet Member

Lucy Hodgson

Relevant Officer

Catherine Driscoll – Director of Children, Families and Communities

Recommendation

1. The Director of Children, Families and Communities recommends that the Cabinet Member with Responsibility for Communities:
2. supports the proposal for Severn Arts to operate as a separate legal entity entirely independent of the Council, as set out in the report with key points outlined in paragraph 7;
3. approves the transfer of Severn Arts (previously known as Worcestershire Youth Music) to a Company Limited by Guarantee with charitable status on or after 1 January 2018 and delegates authority to the Director of Children, Families and Communities to take the final decision on such a transfer and to approve the final development of the terms on which Severn Arts will leave the Council, in consultation with the Cabinet Member with Responsibility for Communities;
4. authorises the Director of Children, Families and Communities to manage the transfer arrangements as outlined in paragraph 9 should she decide the transfer is to take place;
5. authorises the Director of Children, Families and Communities to appoint an ex-officio director from time to time to sit on the Board of Severn Arts should it be established as an independent entity.

Background

1. In September 2015, Cabinet approved, in principle, Option 5 of a Commissioning Cycle Recommendations Report for the future of Worcestershire Youth Music, since renamed Severn Arts. The resolution that was passed is:

*(a) a Company Limited by Guarantee with charitable status be supported in principle as the preferred governance option for the Worcestershire Youth Music service (Option 5), and the development of a Detailed Business Case for this option be approved; and*

*(b) authority be delegated to the Cabinet Member with Responsibility for Children and Families, in consultation with the Director of Children's Services and the Director of Business, Environment and Community, to take the final decision on the future governance of the Worcestershire Youth Music service based on the findings of the Detailed Business Case.*

1. Due to Council restructures, that delegation has since been reassigned by the Leader to the Cabinet Member with Responsibility for Communities, and there is no longer a need to consult with the Director of Business, Environment and Community.
2. The Council has a statutory duty to ensure the music components of the National Curriculum are delivered, to all publicly funded schools and, more generally, to contribute to the spiritual, moral, mental and physical education of the community by securing efficient education at primary and secondary level. These are the County Council's responsibilities under the Education Act 2002. Severn Arts complements the fulfilment of this function by the Council to fulfil these duties because it offers music education to all schools in Worcestershire, including the music components of the National Curriculum.
3. Severn Arts is made up of 104 staff (33.75 FTE) and has operated as a traded service for many years and derives the majority of its income from schools through Service Level Agreements. However, in the current economic, political and educational policy environment it has become increasingly difficult for the service to operate flexibly, efficiently and responsively, such as being able to access alternative sources of funding, which is particularly important as arts funding becomes more limited due to the Arts Council Grant only being guaranteed at the current rate until 2019-20. Within the context of a new business model outside of the Council, Severn Arts will be able to trade more efficiently and compete more effectively, whilst at the same time maintaining a positive impact upon the quality of teaching, pupil progress, learning outcomes and the social and emotional health of children and young people.
4. The Council has assessed the robustness of the business plan and financial projectionsthat have been developed by Severn Arts for the proposed new organisation, these have also been independently reviewed and advised by Solicitors acting for Severn Arts. Although the Council acknowledges that the Business Plan is for Severn Arts, the Council concurs with the risks that have been identified and worked with Severn Arts to agree the terms upon which it leaves the Council. Salient points and risk have been identified below.
5. Some key points from the Business Plan:
   1. The new company would be a not-for-profit organisation maintaining a public sector ethos, working in partnership, being fully inclusive, and seeking new opportunities to increase its funding base.
   2. The Board of the company would invite representation from the Council, Worcestershire Arts Partnership and the Music Education Hub, as well as recruiting up to an additional five directors with expertise in the business / commercial world, education, fundraising, inclusion and diversity and more.
   3. As a new company, Severn Arts intends to develop its remit to encompass a broader spectrum of Arts activity for people young and old, across Worcestershire and beyond. It currently leads and delivers on music education, but over recent years the service has developed a number of partnerships with the wider arts community, and Severn Arts would wish to play a more strategic role in the arts generally, including brokering arts activity.
   4. Severn Arts will continue to build a sustainable business model with the long-term aim of not being dependent on grant funding to survive.
   5. Severn Arts has identified a need for a loan from the Council at commercial rates to enable it to meet cash-flow requirements related to the need to pay staff before payment is received from schools and parents.
   6. On the basis of the financial arrangements explained above, the move to a charitable company is a long-term plan for the service to be financially sound and takes into account managing the foreseeable risks of:-

* Loss of or reduction in the Government grant after 2020
* Unwillingness (or inability) of schools to pay the fees (or the proposed increases in fees)
* Rising costs of staffing – particularly the employer's pension contribution
* The ability to raise income to the levels outlined in the business plan.

**The terms on which it is proposed Severn Arts leave the Council**

1. Successful delivery of the Business Plan depends on certain key factors. If approved, the Council would no longer manage the service or employ the staff from on or after 1 January 2018, but it should continue to have a strong interest in its success. Approval is sought to now develop these terms into a formal Transfer Agreement in line with recommendation 2b.

* **Cash-flow loan** – A secured cash-flow loan of up to £470,000 has been agreed over a period of seven years with interest repayments at a commercial rate of 4.78%pa. This will ensure that staff will be paid whilst Severn Arts is awaiting payment from schools and parents.

NB: Whilst within the Council, staff are paid in arrears for their work but in advance of payments from schools and parents.

* **Pensions** – All staff will transfer to Severn Arts on a fully funded basis and the risk for future pension liabilities will be Severn Arts'. Currently 90% of staff within scope are entitled to be in the Teacher Pension Scheme (TPS) and 10% of staff are entitled to be in the Local Government Pension Scheme (LGPS). Independent advice has confirmed that Severn Arts staff can still access the TPS upon transfer. Severn Arts will need to seek admitted body status in to the LGPS.
* **Asset transfer** – it is recommended that the musical instruments are transferred to Severn Arts, and provide security for the loan, once the new company is formed and that the detail concerning this transfer is considered and specified in the Transfer Agreement.
* **Reserve** – it is recommended that the reserve, built up by Severn Arts, is transferred to the new company upon its formation and in line with the transfer agreement. The reserve is required to provide assurance to the Charity Commission and to Directors that the organisation is financially viable and has means of covering the cost of its potential future liabilities, including redundancy costs that the Council would no longer be responsible for. The reserve at 31st March 2017 was valued at £436k. The reserve has increased significantly since the original 2015 Cabinet report. Officers have reviewed the potential commitments against the reserve and due to the increased level are assured that risks are provided for. Transferring this level of reserve has negated the need for the Council to enter into any further long term financial agreement. The reserve itself is not secured but is needed to make Severn Arts viable. This is therefore a risk. However, the Council's continuing presence on the board (see below) will provide a check and balance on financial management.
* **Function Provider -** it is recommended that it is made clear within the Transfer Agreement that Severn Arts is regarded as a Function Provider to the Council, and outlines the ongoing relationship between the two organisations. A ‘Function Provider’ is an organisation that provides services "for the purpose of, or in connection with" the exercise of a local authority's education functions. This will also allow Severn Arts to participate in the Teacher Pension Scheme (TPS) and continue to evidence the Council is exercising the function
* **Continuing role of the Council** – the Council shall be entitled to appoint an ex-officio director to represent its interests on the Board of Severn Arts. It is recommended that a Council officer whose role at the Council means they will not suffer from a potential conflict of interest in complying with the statutory requirements of being a company director as well as the expectations of a Council officer is nominated.

**Transfer of Severn Arts**

1. The following activities will need to take place to ensure a smooth transition with a target date of on or after the 1 January 2018:

* New company is formed and application for charitable registration with the Charity Commission
* Directors are recruited
* Transfer agreement, based on the points outlined above, between the Council and Severn Arts developed and entered into
* Transfer of the Arts Council grant to Severn Arts is established
* Novation of contracts/service level agreements with schools
* Staff are TUPE transferred to Severn Arts and the company is launched

Legal, Financial and HR Implications

1. The legal implications of Severn Arts being transferred to a Company Limited by Guarantee with charitable status were outlined in the original Recommendations Report submitted to Cabinet in 2015.
2. The Council's Legal Services and Severn Arts’ external legal advisors, Anthony Collins, are engaged in the transfer process and would be involved in finalising the transfer agreement.
3. The financial implications of the transfer for the Council form part of the current negotiations and will involve finalising the detail highlighted in paragraph 7. In addition, the transfer of staff into an external company will reduce the Council's spend on support services such as HR, Finance and IT and contribute towards wider Transformation savings and are summarised below .

* As shown in the options appraisal which accompanied the 2015 Cabinet Report, redundancy would be more likely in the future if the service stays within WCC. If Severn Arts does not become independent it is more likely that the service would be commercially and educationally outpaced by competitors and become devalued and even lost in the future ,with decommissioning more expensive that externalising.
* Removal of the redundancy liabilities to be met by WCC. Long term financial savings relating to future pension contributions.
* Reducing the headcount for the Council and the need to provide centralised services support to Severn Arts (IT, Finance, HR, management and admin etc.)
* The benefits of `spinning out` to Severn Arts will directly impact on the support that it can provide for its stakeholders

1. The HR implications of this transfer are that all 104 staff (33.75 FTE) currently employed by the Council in Severn Arts will, on or after 1 January 2018, be TUPE transferred to the new company Severn Arts who will then become their new employer. The staff have been kept informed of the recommendations and consultation will be carried out prior to final TUPE transfer in line with TUPE Regulations and appropriate procedures.

**Privacy and Public Health Impact Assessments**

1. No adverse effects identified

Equality and Diversity Implications

1. An Equality Impact Screening was carried out in 2015. This found there was no need for a full Equality Impact Assessment to be completed. This screening has been reviewed and the detail and findings of this have not changed.

Supporting Information

* Appendix A – Severn Arts Business Plan (exempt financial appendix – confidential)

Contact Points

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Background Papers

In the opinion of the proper officer (in this case the Director of Children, Families and Communities) the following are the background papers relating to the subject matter of this report:

* Future Governance of Worcestershire Youth Music - Cabinet Report, 24 September 2015
* Future Governance of Worcestershire Youth Music - Cabinet Report App 1 Recommendations Report