


Commissioner Decision Report 16 June 2016	 TOWER HAMLETS
Report of: Zena Cooke, Corporate Director Resources	Classification: Unrestricted
Building Licence Grant Somali Senior Citizens Club	

Lead Member	Rachel Saunders
Originating Officer(s)	Steve Hill – Head of Benefits Services
Wards affected	Weavers
Key Decision?	Yes
Community Plan Theme	One Tower Hamlets

EXECUTIVE SUMMARY

This report deals with arrangements for a licence agreement for the use of Granby Hall (37 Saint Matthew’s Row, E2 6DT) by the Somali Senior Citizens Club.

It is proposed that the organisation is assisted in the provision of an interim six month ‘licence’ to use the premises for their designated hours of use, whilst the Community Buildings review, which will include Granby Hall, is completed.

RECOMMENDATIONS:

The Commissioners are recommended to:

1. Consider approval of an allocation of grant of £12,500 to the Somali Senior Citizens Club to cover their licence fee for a six month period pending the completion of the Community Buildings Review, which will determine the future use of Granby Hall.
2. Agree that, if minded to make the award, the grant funding of £12,500 will be:
 - i. transferred subject to receipt of a signed licence agreement;
 - ii. paid by a reallocation of funding from the MSG budget to the property budget; and
 - iii. the currently withheld MSG payments will then be released to the Somali Senior Citizens Club.
3. Agree that the council may enter into a licence in relation to Granby Hall, 37 St Matthew’s Row, E2 6DT, with the Somali Senior Citizens Club

for a six-month term, followed by a rolling month-to-month break, for a consideration of £12,500 (£25,000 pa pro rata).

1. REASONS FOR THE DECISIONS

- 1.1 At their meeting of 29th July 2015 Commissioners instructed that all grant funded organisations occupying community buildings must have an appropriate agreement in place as a pre-requisite for the release of their Main Stream Grant (MSG) allocation.

2. ALTERNATIVE OPTIONS

- 2.1 That the decision to require a formal agreement for the use of a community building be changed. This decision has already been implemented and a change would impact on all organisations in receipt of MSG and occupying council premises.
- 2.2 Refusing the grant application. This option is likely to result in the Somali Senior Citizens Club having to close down their organisation and its service provision.

3. DETAILS OF REPORT

- 3.1 The Somali Senior Citizens Club currently occupies Granby Hall, 37 Saint Mathew's Row, E2 6DT; from where it delivers an MSG funded project.
- 3.2 The MSG funded project is entitled: Somali Senior Citizens Club, and is funded through Theme 3 (Prevention Health and Wellbeing) of the MSG 2015/18 Programme. The funding was approved at the Commissioners Decision Making Meeting in public on 29 July 2015. The approved annual grant is £32,520.
- 3.3 The current occupancy is in a Council community building and is based on a Tenancy at Will @ £1 per day. This arrangement has been in place for at least the last 10 years.
- 3.4 In preparing their MSG application for submission, the organisation had been anticipating that their occupancy arrangement would remain the same for the future, or at least for the duration of the 2015/18 Main Stream Grant Programme.
- 3.5 As a consequence, when the Somali Senior Citizens Club applied to the new Programme for MSG support, they did not take into consideration any likely increase in the organisational overhead costs to cover premises rent. The Somali Senior Citizens Club submitted their original application for MSG on 4th June 2016.

- 3.6 However, as part of the MSG decisions of 29 July 2015, it was made clear that all organisations occupying community buildings (including the Somali Senior Citizens Club) would going forward, be required to enter into appropriate formal lease arrangements.
- 3.7 Subsequently, it was also made clear that the leases relating to the buildings in question would be based on the relevant market rent for community buildings. The rent for the whole of Granby Hall is estimated to be in the region of £60k per year. The following table sets out the building occupancy costs based on two options: option 1 is for the organisation to lease the building which gives them exclusive use of the premises; whilst option 2 is a licence arrangement based on the organisations current usage.

Costs Under Lease	
Annual	£60,000.00
Weekly	£1,153.85
Daily	£164.84
Hourly	£13.74
Costs Under Licence	
7 hours use per day	£96.15
5 days a week (weekly)	£480.77
One year	£25,000.00
Six month licence	£12,500.00

- 3.8 Officers have been in discussions with the Somali Senior Citizens Club for a number of months in an effort to come to a mutually agreeable way forward regarding their continued occupancy of Granby Hall. As part of the proposed premises review, Granby Hall is to be redesigned and it is expected that after these works have been completed, the Somali Senior Citizens Club will only require a smaller area within Granby Hall to deliver their services from. Based on the discussions to date, it is considered that for the interim, the most appropriate course of action is for the organisation to take on a 'licence' to occupy the building for the hours/days that they utilise the building. This will enable time for the review of the use of Granby Hall to be completed.
- 3.9 The licence will allow the Somali Senior Citizens Club use of the building between 9am and 4pm, Monday to Thursday and Saturday. For the other times, the council will work to identify other users who can use the building, on payment of the appropriate charge. This could include other third sector groups, local residents' groups, or local residents who wish to hold private functions such as birthday parties etc. This could either be on a regular basis, and they would be afforded a similar licence, or as a one off hire, which would be based on the council's standard room hire conditions. However, this will need to be managed carefully so as not to pre-empt, or otherwise fetter, the outcome of the Community Buildings review.

- 3.10 The option for the organisation to take on the lease of the building is not a viable option both due to cost and due to the council's desire for the building to become a community hub. The creation of a hub at this location is expected to be one of the recommendations from officers as part of the report to Cabinet in July, setting out the outcome of the review of community buildings. The details of the community hub are expected to be worked out within the next 6 months; this is reflected in the length of licence being proposed.
- 3.11 The implementation plan for the Community Buildings review is still to be finalised but it is expected that following consideration of the review, at July Cabinet, the plan will be set out on a phased basis (in order to manage the asset management and legal workload arising from it). The council's aim is to complete any required reconfiguration works in order to allow the hub to be operational from 1st April 2017. It may be necessary to temporarily relocate the Somali Senior Citizens Club during this process and an appropriate alternative venue will have to be identified.
- 3.12 Additionally, at this time the organisation has confirmed that it is not able to meet the agreed licence costs unless they are able to recoup the fee through the MSG budget. MSG payments to the Somali Senior Citizens Club have been subject to the resolution of the premises issues.
- 3.13 The organisation is currently funded £33k p.a. through Theme 3 of the MSG Programme: Prevention Health and Wellbeing to provide a 'Lunchclub Plus' Service; details of which are outlined below.
- A luncheon club providing subsidized freshly cooked, healthy meals and refreshments
 - Social activities such as board games
 - Activities to support users in the use of computers and new technology
 - Health promotion and physical activities including 30-minute exercise sessions and encouraging members to walk a reasonable distance every day
- 3.14 The current Theme 3 budget has an unallocated budget of £127k; part of this funding could be used to fund the premises costs for the Somali Senior Citizens Club during the period of transition for Granby Hall.
- 3.15 The Somali Senior Citizens Club have advised that if their MSG funding is not released imminently and if assistance cannot be provided with regard to help with the premises costs, the organisation is at risk of closure. The Club have confirmed by email that they have insufficient funds to continue to provide the service and have not paid their staff for five months. A copy of the email dated 6th June 2016 from the Somali Senior Citizens Club is attached at Appendix 1.
- 3.16 An application from the Somali Senior Citizens Club has been received requesting an MSG payment to cover licence costs so that the organisation may continue providing its services. The organisation have expressed their reluctance to sign a licence agreement until such time as they can cover the

cost of the licence and have advised officers that if their MSG application is successful they would then be in a position to sign the agreement.

- 3.17 If Commissioners are minded to award the £12,500 MSG for a six month period pending the review of the use of Granby Hall, it is recommended that the award is by recompense through grant via budget transfer to the property budget. The Somali Senior Citizens Club will be expected to reflect the allocation of the MSG funding to meet the premises cost for the interim period to be reflected in their accounts.
- 3.18 Furthermore it is proposed that the award be made only upon receipt of a signed licence agreement and that at that time, the withheld MSG funds (being held pending the outcome of the premises issue), then be released.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The Chief Finance officer has been consulted on this report. The total grant payable to this organisation will, if approved, be £42,020 being the £32,520 previously agreed by the Commissioners in July 2015 together with the additional licence costs set out in this report of £12,500. This will allow the organisation to operate from the building for a period of 6 months from the date a licence is signed.
- 4.2 Given that there appears to be a desire for this organisation to continue to operate on an on-going basis from a reconfigured building, it is likely that a further application to the MSG programme may be forthcoming after this initial 6 month period. It would seem prudent therefore to reserve sufficient MSG resources to allow for this eventuality.

5. LEGAL COMMENTS

5.1 Grants

- 5.2 Whilst there is no strict legal definition of grant, a grant is in the nature of a gift and is based in trust law. However, grants are often given for a purpose so it is sometimes unclear whether a grant has been made or the arrangement is a contract for services. A contract for services is not a grant and therefore, an arrangement which is classified as a contract for services would be outside the remit of the power conferred upon the commissioners to approve.
- 5.2 There will be many grants which are made by the Council for the purpose of discharging one of its statutory duties. However, as a grant is in the nature of a gift, it is considered there must be some element of discretion on the part of the Council as grantor as to whom a grant is made to and whether this is made. If the Council is under a legal duty to provide a payment to a specific individual or organisation, and cannot lawfully elect not to make such a payment, then that should not amount to a grant.

5.3 In this case, the Council is not under a legal duty to provide this payment of £12,500 to the Somali Senior Citizens Club. Therefore the payment is discretionary and is considered to be a grant.

5.4 **Commissioners' Power in Relation to Grants**

5.5 The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17th December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).

5.5 To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure the Council has power to make the grants in question. The Commissioners will wish to be satisfied that this is the case. It appears from the information provided in the report that the grant is capable of being supported under the Council's powers, specifically under section 1 of the Localism Act 2011 whereby the Council has the general power of competence. This means that the Council has the power to do anything that an ordinary human being could do, unless statute specifically restricts the Council from acting in the way it wishes. Therefore, in the absence of specific legislation to the contrary it would appear to be within the Council's power to issue these grants, subject always to the directions of the Secretary Of State For Communities and Local Government.

5.7 The Council is required to ensure that the opportunity to receive grant funding is made available but the public generally. The details of the report show that a fair and open procedure has been undertaken to determine the recipients of the grant, with the opportunity advertised generally and applications measured against the specified criteria. This has been followed up with a rigorous appraisal of the bids to determine the winning recipient.

5.8 **Commissioners' Power in Relation to Disposals**

5.9 The Direction issued by the Minister on 17th December 2014 requires the Council, until 31st March 2017, to "..... *obtain the prior written agreement of the Commissioners **before** [emphasis added] entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation.*"

5.10 **Lease/ Tenancy/ Licence**

5.11 In business, there are three (3) ways to occupy a property for commercial purposes: a Lease, a Tenancy or a Licence. There are differences between the three but the main difference legally is that a Lease and Tenancy create an interest in the land but a Licence merely gives permission to use the

property. As it is merely a permission to use, it therefore is not a “**disposal, or transfer, of any real property**” and therefore is not covered by the Direction to obtain Commissioners’ approval.

5.12 Care has to be taken, however, as merely calling a document a Licence does not necessarily make it such and if the licensee has exclusive occupation of the property then, subject to the length of the term, that will generally lead to the conclusion that a tenancy exists and which will give the tenant rights of security under the Landlord and Tenant Act 1954. This will then mean that it was “**disposal, or transfer, of any real property**” and Commissioner approval would therefore be required.

5.13 In this case, it is stated the Somali Senior Citizens Club take on a six-month ‘licence’ to occupy Granby Hall for the hours/ days that they utilise the building. The Somali Senior Citizens Club does not have exclusive possession. Therefore they merely have permission to use the property and as there is no “**disposal, or transfer, of any real property**”, Commissioner approval is not required.

5.14 **Disposal Powers**

5.15 As the payment of the grant is dependent upon entering into a licence agreement then, to the extent that the Commissioners may consider the licence a disposal, then the Council’s powers of disposal depend upon whether or not the land is held for housing purposes. If it is held for housing purposes then regard has to be had to section 32 of the Housing Act 1985. Section 32 states that a local authority may not dispose of any land held by them without the consent of the Secretary of State. In order to facilitate the disposal of land held for housing purposes the Secretary of State has issued a series of general consents, which permit the disposal of land held for housing purposes without the need to obtain express consent. The consents are collectively known as The General Housing Consents 2013.

5.16 In accordance with paragraph A2.2 of the General Housing Consents a disposal includes the grant of a lease of any duration. Paragraph A3.1.1 of the General Housing Consents provides that a local authority may dispose of land for a consideration equal to its market value.

5.17 Where the land is not held under Housing Revenue powers then by virtue of section 123 of the Local Government Act 1972 (‘the 1972 Act’), the Council may dispose of its land in any manner that it may wish. However, except in the case of a short tenancy (i.e. leases of less than 7 years), the consideration for such disposal must be the best that can reasonably be obtained. Otherwise the Council requires consent of the Secretary of State for the disposal.

5.18 **The Council’s procedure for disposals and lettings**

5.19 The Council’s procedure for disposals and lettings, adopted at Cabinet on 8th April 2015, specify that disposals may be by one of the following means: (a)

informal tender; (b) formal tender; (c) auction; and (d) sale by negotiation. The procedures provide that the Service Head, Corporate Property and Capital Delivery will determine the most appropriate method of disposal, based on the type and location of the property and the prevailing property market and subject to the Council meeting its legal requirements. In this case, the “disposal” has been by negotiation.

5.20 **Best Value Duty**

5.21 Also the Council has a duty under Section 3 of the Local Government Act 1999 to ensure that all agreements into which it enters satisfies the Council’s Best Value duty. Therefore, the grant agreement with the provider must contain robust monitoring and performance clauses ensuring that value for money is achieved through the grant. Information relevant to Best Value implications is contained in paragraph 7 of the report.

5.22 In making the grant, the Council must ensure that no part of the funds issued represents a profit element to any of the recipients. The inclusion of profit or the opportunity of making a profit from the grant or third parties indicates that the grant is really procurement activity and would otherwise be subject to the Council’s Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases.

5.23 The Treaty on the Functioning of the European Union (TFEU) provides that certain government activities may be prohibited because they give an advantage in a selective way to certain entities, which might affect competition within the internal market. Those advantages may amount to prohibited state aid, or may be state aid which is either expressly allowed by the Treaty, or which may be allowed, dependent on the circumstances. In this case, the grant falls under the *de minimis* threshold for the purposes of European restrictions on State aid.

5.24 **Equality Duty**

5.25 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in the One Tower Hamlets section of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1. The contribution of VCS Organisations helping to deliver One Tower Hamlets objectives and priorities are explicitly recognised and articulated within the Council’s agreed Voluntary and Community Sector Strategy.

- 6.2 VCS Organisations play a key role in delivering services that address inequality, improve cohesion and increase community leadership. These services are real examples of 'One Tower Hamlets' in practice.
- 6.3 The opportunities offered through the MSG Programme will play a key role in delivering the aims of One Tower Hamlets.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The level of grant to this organisation meets the best value requirements related to the lease/licence costs related to the council's portfolio of community buildings.
- 7.2 There will also be ongoing performance monitoring of the activities and services being provided at the facility to ensure of that such services are meeting identified needs.
- 7.6 Monitoring and reporting arrangements are in place to ensure that Main Stream Grant payments to the organisation are in line with performance. The agreed Payment By Results process will ensure that grants will not be paid to organisations that either significantly or consistently under-perform, or those that are not able to properly evidence the work/outcomes for which the organisation's funding has been approved.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The organisation is funded through the MSG 2015/18 Programme which has a broad focus including developing new skills for local people and organisations that are disadvantaged and perhaps facing multiple barriers to achieving a sustainable future.
- 8.2 The individuals being supported by this organisation, as well as the organisation itself will be encouraged to consider taking appropriate steps to minimise negative impacts on the environment when taking up the opportunities offered within the facility.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 A number of different risks arise from any funding of external organisations. However, as part of the ongoing programme and project management arrangements, support, advice and guidance will be made available to the organisation to ensure that all performance and other risks are minimised.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The project outcomes that are being targeted through the MSG Programme which funds the project, supports the council's corporate objectives of reducing crime and disorder throughout the borough.

11. SAFEGUARDING IMPLICATIONS

- 11.1 As part of the MSG application process the organisation was required to provide details of its safeguarding policy if appropriate. The Grant Agreement that the organisation has entered into includes requirements in relation to safeguarding.
- 11.2 If the organisation provides its services to vulnerable adults and employs staff or volunteers in positions where duties include caring for, training, supervising or being responsible in some way for them, they will be required to fully comply with all necessary safeguarding requirements.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 Email from Somali Senior Citizens Club 6th June 2016

Background Documents – Local Authorities (Executive Arrangements) (Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

- N/A

Appendix 1

Email received from the Somali Senior Citizens Club on 6th June 2016.

Dear Steve,

Following our Telephone conversation I am writing to inform you that our Organisation did not pay its staff for 5 months . That is very hard to every to organization let lone ours. Under such circumstance it is impossible to manage the project and to deliver service.

Due to that we ask the council to be sensible and release the grant funding in order to pay the outstanding costs and staff salary, now we enter June the six month without funding been released I therefore urge you to see the impact of the situation.

Thank you for your cooperation.

Best regards

Jama Omar