

## **Submission by Richard Batley & Barry Toon, Community Partnership for Selly Oak (CP4SO) to Birmingham City Council Owned Assets Inquiry**

The Economy and Skills Scrutiny Committee has called for information on the experience of SMEs and community organizations regarding

- i) the operational management and disposal of BCC assets
- ii) how to balance financial propriety in obtaining best value from BCC's assets against supporting SMEs and the voluntary sector in economic development and regeneration; and how to weigh social and economic value against financial gain
- iii) how property contributes to supporting communities and local economies
- iv) the designation/listing of Assets of Community Value

CP4SO is a federation of local residents' groups representing the Selly Oak district in regard to planning and regeneration issues. CP4SO has incorporated a charitable not for profit Community Benefit Society – Selly Oak Community Development Trust Ltd, which enables it to manage and develop local social facilities and community housing schemes. We have a particular interest in reviving the 'civic quarter' of Selly Oak by restoring the cluster of Grade II listed buildings which include the old Selly Oak Library. The city council closed the Library in April 2017 and left the building empty.

Here we focus on the management of the Library building raising three issues: 1) its care and preservation by BCC, 2) its status as an Asset of Community Value, and 3) its disposal and future use by the community of Selly Oak. We should begin by making it clear that we do understand that the City Council currently faces severe city-wide problems and demands on its resources.

### **1. The care and preservation of the Library building under the ownership of the city council**

The building became vacant in April 2017. A small part of the local library service was transferred to a neighbouring building operated by Sense. As we understand from Dr Tim O'Neill, the building then became 'surplus to requirements' though the building remained in the ownership of the City Council, and the duty holder remained the community library service.

It is a statutory requirement on the Council acting as Trustee at all times to seek to preserve and properly manage its assets. However, over the last three years CP4SO has had to report to the council several cases of vandalism, break-ins, stripping of materials from the roof and entry of water. In August this year CP4SO's volunteer members took action to physically remove the substantial vegetation that grew into, onto and around the building.

Dr O'Neill assured CP4SO in September 2020 that there would be a weekly check of the building, that cases of vandalism and misuse would be monitored, and that Acivico would work with contractors in regard to security, health and safety issues related to the building. The building has now been "Sitexed", which while making it more secure, does not improve the visual amenity of the Bristol Rd. We would also note that vegetation is again establishing into the structure. ***The longer this process continues the more costly to the city it becomes.***

From other informants within BCC, we have learned that the budget for building maintenance is divided into small parcels between departments making it difficult for any of them to act effectively. ***This might be worthy of investigation by the Scrutiny Committee.***

## **2. Asset of Community Value**

CP4SO first attempted to register the Library Building as a community asset on 3<sup>rd</sup> July 2019 when we delivered by hand all the required documentation to the Corporate Strategy Team. Despite repeated requests for information on its progress no reply was ever received. At a meeting with the Deputy Leader and senior officers of the council, we were advised to resubmit; we did so on 25 February 2020 with more than the required 21 signatures of support.

In response to the second application we were informed by Mr Andrew Perry, Senior Service Manager of the Neighbourhoods Directorate that the Library did not qualify for ACV status:

“the Library is caught under Section 95(5) of the Localism Act, and is dealt with at Section 95(5) of the Act. I have copied and highlighted the relevant section below for your ease of reference. In short, properties that have been gifted and are held by Trustees are exempt.

### **95 Moratorium**

This section has no associated Explanatory Notes

(1) A person who is an owner of land included in a local authority’s list of assets of community value must not enter into a relevant disposal of the land unless each of conditions A to C is met.

(2) Condition A is that that particular person has notified the local authority in writing of that person’s wish to enter into a relevant disposal of the land.

(3) Condition B is that either—

(a) the interim moratorium period has ended without the local authority having received during that period, from any community interest group, a written request (however expressed) for the group to be treated as a potential bidder in relation to the land, or (b) the full moratorium period has ended.

(4) Condition C is that the protected period has not ended.

(5) Subsection (1) does not apply in relation to a relevant disposal of land—  
(a) if the disposal is by way of gift (including a gift to trustees of any trusts by way of settlement upon the trusts),

(b) if the disposal is by personal representatives of a deceased person in satisfaction of an entitlement under the will, or on the intestacy, of the deceased person,

(c) if the disposal is by personal representatives of a deceased person in order to raise money to—

(i) pay debts of the deceased person,

(ii) pay taxes,

(iii) pay costs of administering the deceased person’s estate, or

(iv) pay pecuniary legacies or satisfy some other entitlement under the will, or on the intestacy, of the deceased person,

***CP4SO suggests the Scrutiny Committee consider whether there is any way round this position.***

### **3. The disposal and future use of the Library Building**

Since the Library's closure in 2017, CP4SO has been working to return the building to community use. To advance this, early in February 2019 we obtained Lottery funding to carry out an initial survey of the architectural state of the building and its possible uses. Our intention was (and remains) then to raise further funding to restore the building and put it to community use.

The contracted architects (APEC) reported that the building was structurally sound and in relatively good condition in spite of neglect. They proposed plans for how the building could be internally reconfigured and used, and they interviewed a wide range of potential community users. Their conclusion was that the building had considerable potential for community use.

The remaining question was whether the City Council would allow us to have use of the building or would dispose of it to us. We imagined that this would be a straightforward matter because, on 12 September 2017, the Council acting as Trustee decided as follows:

- i) approves that the land held in trust at 669 Bristol Road comprising the former Library can be disposed of on terms to be agreed
- ii) and to submit to the Charity Commission an application for a Scheme/Order allowing the trust the necessary additional powers to undertake the disposal of 'specie' land
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.

We then had several meetings in 2019 and 2020 with a wide range of leading councillors (including Philip Davies, Tristan Chatfield, Fred Grindrod, Brigid Jones and Karen McCarthy) and two meetings organized by Deputy Leader Brigid Jones with property management officers of the City Council. We were repeatedly told that the Library was just one of many that the City was considering and that it was not on the list already presented for disposal by the City Council to the Charity Commission. We have gained no clear information as to why it was not on that list.

In August 2020, CP4SO presented to the City Council a petition ('Save Selly Oak Library') with 1750 signatures via Cllr Brigid Jones. In response we were informed in a letter of 15 September 2020 from Dr Tim O'Neill that there were legal barriers to the disposal of the building while conveying the encouraging view that: "We agree that this building has great potential as a community resource within the Selly Oak area and community involvement in supporting its redevelopment is welcome". The problem is that by the time a positive decision might be taken, the building will be in a worse state and will cost more to recover.

The relevant parts of Dr O'Neill's letter set out the legal barriers to early release of the building as follows:

"However, the property is considered to be held in trust and a formal consent and an application for a Scheme of Powers from the Charity Commission is still required. Until this formal process is completed, the building is unable to be released. Although advice from Birmingham Property Services indicates that the city council

could potentially negotiate and agree terms with any party, if there is no charge or market exposure there is a real risk that this work would not be approved by the Charity Commission. Under these circumstances transfer of this building to another party could not take place.

In acknowledgement of the great potential and the level of community interest in moving forward, a meeting was held within the City Council in June 2020 to seek to identify a way forward. City council property officers subsequently held a meeting with Legal Services in July 2020. The library service was not directly involved in this meeting but feedback received from the meeting was that the future of Selly Oak Library will be taken up with the Charity Commission by Legal Services as part of the overall outstanding trust work within the city as a whole."

***CP4SO would welcome the Scrutiny Committee's consideration of the following issues:***

- The retrenchment of the physical presence of the Council in local areas of the city. In the case of the Selly Oak Library this was the last fully publicly accessible building the city had in the area. The city now only delivers services by "parachute" or mediated/digital access. Is this a locally inclusive, accessible approach for all members of the community with its diverse needs and abilities?
- We note that there is agreement between us and the City Council's Education and Skills Department that "this building has great potential as a community resource within the Selly Oak area and community involvement in supporting its redevelopment is welcome". However, what consistent attempt has the city made to promote this objective?
- It appears that the Library Building's role and social values as a community asset is effectively ruled out by Property Services' view of what the Charity Commission would tolerate: "if there is no charge or market exposure there is a real risk that this work would not be approved by the Charity Commission. Under these circumstances transfer of this building could not take place."
- Is it correct that bodies such as the Charity Commission and Birmingham City Council would look for the building to be sold to the highest bidder regardless of community benefit? After all, the council has declared policies in favour of supporting localism. CP4SO and the 1750 signatories of our petition would at least expect the City Council to test this with the Charity Commission.
- The question of how the Charity Commission might respond can only be tested by submitting the Library as a case for disposal. We understand from several meetings with Property Services officials and the deputy leader of the council that the Library is near the back of the queue of cases finding their way through Legal Services to the Charity Commission. This seems surprising in the light of the fact that the full council and the Charities & Trust Committee resolved in 2017 to dispose of the Library. If this was a commercial development would the same lack of progress be acceptable?

***Alternative routes to community use might be considered by the Scrutiny Committee if full disposal appears problematic:***

- i) Simple transfer (with or without rental payments) of the council's asset (the Library Building) to the community represented by Selly Oak CDT as a not for profit charitable Community Benefit Society could be undertaken without change of use. The specific

objects of the existing trust are simply to 'use of the premises as a public library'. The uses CP450 and the CDT suggest for the building would almost certainly fall within the normal educational/library ambit of the building. This would surely mean there would be no need to refer it to the Charity Commission for alteration of the Trust.

- ii) Given the delay, which is only leading to the building's increased deterioration, we propose that the best alternative to full disposal would be for the council to enter into an initial "Heads of Terms" agreement with the Selly Oak CDT. With a "Heads of Terms" agreement, the Community Benefit Society would be in a position to seek funding to restore the building for the use of the community. In the present climate fundraising for the project would certainly not be easy, but this should not preclude us from starting the groundwork to prepare the way forward.

Submitted on behalf of the Community Partnership for Selly Oak  
By Richard Batley & Barry Toon.

26<sup>th</sup> November 2020.