

# Public Document Pack



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11 October 2021

Dear Councillor

**NOTICE OF DELEGATED DECISION – (DD18 21) APPLICATION TO INCLUDE THE ROUNDHOUSE THEATRE, DOVER DISCOVERY CENTRE ON THE COUNCIL’S LIST OF ASSETS OF COMMUNITY VALUE**

Please find attached details of a decision taken by Mr Roger Walton, Strategic Director (Operations and Commercial), to include the Roundhouse Theatre, Dover Discovery Centre on the Council’s List of Assets of Community Value.

As a non-Key Officer decision, call-in does not apply (paragraph 18(a) of Part 4 (Rules of Procedure) of the Constitution).

Members of the public who require further information are asked to contact Kate Batty-Smith, Democratic Services Officer on 01304 872303 or by e-mail at [democraticservices@dover.gov.uk](mailto:democraticservices@dover.gov.uk).

Yours sincerely

A handwritten signature in cursive script that reads "Kate Batty-Smith". Below the signature is a short horizontal line.

Democratic Services Officer

ENCL

- 1 **NOTICE OF DELEGATED DECISION - (DD18 21) APPLICATION TO INCLUDE THE ROUNDHOUSE THEATRE, DOVER DISCOVERY CENTRE ON THE COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE** (Pages 2-6)

## Decision Notice

## Delegated Decision

<b>Decision No:</b>	<b>DD18</b>
<b>Subject:</b>	<b>APPLICATION TO INCLUDE THE ROUNDHOUSE THEATRE, DISCOVERY CENTRE, DOVER ON THE COUNCIL'S LIST OF ASSETS OF COMMUNITY VALUE</b>
<b>Date of Decision:</b>	<b>21 September 2021</b>
<b>Notification Date:</b>	<b>11 October 2021</b>
<b>Implementation Date:</b>	<b>21 September 2021</b>
<b>Decision taken by:</b>	<b>Roger Walton, Strategic Director (Operations and Commercial)</b>
<b>Delegated Authority:</b>	<b>Delegation 281 of the Scheme of Officer Delegations (Section 6) of Part 3 (Responsibility for Functions) of the Constitution</b>
<b>Decision Type:</b>	<b>Executive Non-Key Decision</b>
<b>Call-In to Apply?</b>	<b>No (<i>Call-in does not apply to non-Key Officer Decisions</i>)</b>
<b>Classification:</b>	<b>Unrestricted</b>
<b>Reason for the Decision:</b>	An application has been received to include the Roundhouse Theatre, Discovery Centre, Market Square, Dover within the Council's list of Assets of Community Value.
<b>Decision:</b>	To include the Roundhouse Theatre, Discovery Centre, Market Square, Dover within the District Council's list of Assets of Community Value (ACV).

## 1. Introduction

- 1.1 In determining this application, I have been mindful that I need to determine the nomination in accordance with the provisions of Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
- 1.2 This requires that community nominations to include a property within the District Council's list of Assets of Community Value meet a series of tests including:
- (a) That the provisions of section 89 of the Localism Act are met with regard to the validity of the nomination.
  - (b) Whether the actual current use (not an ancillary use) of the building or other land is one that furthers the social wellbeing or social interests of the local community; AND whether it is realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community (whether or not in the same way as the current use) and if not;
  - (c) Whether there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, AND it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that

would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

## **2. Matters considered in reaching the decision**

2.1 In determining the nomination, I have taken the following into consideration in reaching my decision:

- (a) Chapter 3 of Part 5 of the Localism Act 2011;
- (b) The Assets of Community Value (England) Regulations 2012;
- (c) Department for Communities and Local Government publication “Community Right to Bid: Non-statutory advice note for local authorities”;
- (d) Nomination Form submitted by Dover Town Council and received on 30<sup>th</sup> July 2021;
- (e) Letter from James Sanderson, Head of Property Operation, Kent County Council dated 15<sup>th</sup> September 2021, written in response to the receipt of the application to include the Roundhouse Theatre on the Council’s List of Assets of Community Value.

## **3. Review of application and submissions**

### **Context**

- 3.1 The Roundhouse Theatre is located within the Discovery Centre, in Market Square, Dover, which is owned by Kent County Council (KCC). Prior to the pandemic, the 100-seat auditorium regularly held productions and workshops by The Blackfish Academy, who have been based at the theatre since 2005 and, it is understood, lease the theatre from KCC. The Discovery Centre itself provides, in addition to the theatre, accommodation used by the library and adult education service as well as other commercially used space.
- 3.2 For the past 15 years or so the theatre has provided a performance space within Dover, used by a range of drama groups such as Dover Operatic and Dramatic Society and Dover Youth Theatre, and has provided singing, dancing and drama classes for young people.
- 3.3 As outlined in the letter received from KCC, plans are now being developed by them to undertake major refurbishment works to the building which will see the area currently used as a theatre being converted for other purposes.
- 3.4 The letter received from KCC states that: *“The newly refurbished Dover Discovery Centre will house an enhanced Dover Library and Registrars Service (interlinking with the Dover archive centre), Adult Education and Skills Plus programme, the Good Day Programme (which provides day opportunities for adults with learning difficulties), Integrated Children’s Service (both office and supervised contact), along with the privately run nursery and Dover Museum and Archives.”*
- 3.5 The letter also notes that: *“Following extensive design and consultation work, it is clear that the Theatre cannot be accommodated in the refurbished building. The decision on future uses of the Property was made following extensive consultation (including with DDC), taking into account, detailed design, and viability considerations. KCC has been in discussions with the Theatre operator, Blackfish on this issue and has offered assistance in finding an alternative venue.”*

- 3.6 These proposals have attracted much criticism over recent weeks within the local community, with a petition running on change.org attracting more than 1,000 signatures, and the application by Dover Town Council to include the theatre on the list of Assets of Community Value.
- 3.7 The applicant has noted on the nomination from that: *“The Roundhouse theatre is the only purpose built publicly accessible theatre in Dover. It houses the Black Fish Performing Arts Academy which offers professional dramatic and performance training and experience to young people in this deprived town which has low levels of skills, training, educational achievement, and income. It also provides the only suitable space for conferences and cultural/social gatherings in a central location in public ownership. Its loss to office space as KCC currently proposes (without public consultation) would be of serious detriment to the social wellbeing and interests of our local community.”*
- 3.8 As to whether such community usage could continue, the applicant has noted that: *“Yes, it could. It has been extremely difficult for local organisations to hire or access the Round House owing to poor management and bureaucratic issues within KCC which is an organisation based in Maidstone with little or no understanding of local needs and aspirations in Dover. Under a different community centred management its position next to the regenerated Market Square would be a huge asset allowing a greater range of events, the performing arts academy to continue and other ventures (aligned to the independent cinema in the same building and the soon to be built cultural hub on Bench St) to be developed. The theatre is a crucial piece of the cultural offer to rejuvenate our struggling town centre.”*
- 3.9 KCC’s letter submitted in response to the nomination sets out in some detail their objection to the listing of the theatre as an ACV noting that: *“KCC’s principal objection is that the Theatre is not of ‘community value’ as defined by the Localism Act 2011 because as evidenced by the design and consultation exercise it is not “realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community”*

*In assessing this issue DDC must consider the intentions of the owner and the viability of the continued use (Patel v Hackney (CR/2013/0005)). There is a high degree of certainty that the redevelopment proposals planned by KCC will come forward, and therefore the prospects of community use of the Theatre is extremely remote.”*

- 3.10 In considering the nomination received from Dover Town Council, I shall now consider in turn whether each of the three ‘tests’ noted at paragraph 1.2 above are met:

#### **A. Validity of the Nomination**

- 3.10.1 Section 89(2)(b)(i) of the Localism Act notes that “For the purposes of this Chapter “community nomination”, in relation to a local authority, means a nomination which... is made by parish council in respect of land in England in the parish council’s area.
- 3.10.2 Dover Town Council is a Parish Council, and the Roundhouse Theatre is within the boundaries of the Parish Council and so clearly this test is met.
- 3.10.3 The nomination as submitted by Dover Town Council does of course relate to the Roundhouse Theatre, which is only part of the Discovery Centre. However, I am satisfied that it doesn’t matter that the Roundhouse is not a separate building, nor that it does not have its own title - see para 5.1 of “Community Right to Bid: Non-statutory advice note for local authorities” which

states: “A nomination must include the following information for the local authority to consider: 1. A description of the nominated land including its proposed boundaries. These boundaries do not have to be the same as ownership boundaries, for instance as shown on the Land Registry plan if the land is registered; nor is it necessary for all parts of the nominated site to be in the same ownership.”

3.10.4 I therefore intend to treat the nomination as relating to that part of the property for which it is submitted.

**B. Does the actual current use (not an ancillary use) of the building further the social wellbeing or social interests of the local community; AND is it realistic to think that there can continue to be non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community.**

3.10.5 There is clear evidence as noted by the applicant and indeed acknowledged within the letter received from KCC that the Roundhouse Theatre has, prior to the recent disruption caused by the pandemic, been actively used by community groups. I am therefore satisfied that the actual current use of the theatre can be said to be furthering the social wellbeing or social interests of the local community.

3.10.6 As regards whether it is realistic to think that non-ancillary use of the building or other land that will further the social wellbeing or social interests of the local community can continue, the situation is more complex.

3.10.7 The letter from KCC states very clearly that they consider the prospects of continued community use of the theatre to be extremely remote. However, whilst noting this point of view, I am also mindful that, given that they are a politically led organisation, pressure can and is being brought to bear on KCC to reconsider their proposal to repurpose the space within the Discovery Centre currently occupied by the Roundhouse Theatre.

3.10.8 The Roundhouse Theatre does of course form part of the Discovery Centre, with other parts of this building also being enjoyed by the community. The KCC letter touches on this noting that: “As set out above, the refurbished Property will house various valuable community uses including a library, museum, nursery, adult education, and facilities to support adults with learning difficulties as well as the relocation of integrated children services. It is not accurate suggest that community uses are being lost to office space.” This statement, to some extent, actually supports the case that it is realistic to assume that community use of the building will continue.

3.10.9 It is therefore not unreasonable to consider that there is still a realistic possibility that KCC could, in response to public pressure, reconsider their proposal enabling community use of the space occupied by the Roundhouse Theatre to continue. This viewpoint is consistent with that taken by the judge in *Patel .v. Hackney BC*, the case referred to by KCC in their letter, where it was recognised that there were a number of realistic possibilities, one of which included continued community use.

3.10.10 I am therefore satisfied on balance that the requirements of the Localism Act 2011 as set out at Section 88(1)(a) and (b) are met.

**C. Whether there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or**

**interests of the local community, AND it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.**

3.10.11 Given that I have determined that the current use of the premises is furthering the social wellbeing or social interests of the local community and that it is realistic to think that there can continue to be non-ancillary use which will further (whether or not in the same way) the social wellbeing or social interests of the local community, there is no need therefore to consider whether the test set out at C. above is satisfied.

#### **4 Conclusion**

In conclusion, taking all these points into account I am satisfied:

- That the nomination meets the definition of a community nomination as set out in Section 89(2)(b)(i) of the Localism Act 2011.
- That the nominating body has provided reasonable justification to satisfy the test set out in section 88(1)(a) & (b) of the Localism Act 2011 as to whether an actual current use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, AND it is realistic to think that there can continue to be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community

I have therefore decided that the Roundhouse Theatre should be included within the District Council's list of Assets of Community Value.

#### **5 Any Conflicts of Interest Declared?**

No.

#### **6 Supporting Information**

None.