

Agenda Item No:

Report To: Extraordinary Council

Date of Meeting: 14th March 2024

Report Title: Picturehouse, Elwick Place, Ashford

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Job Title: Corporate Director (Place, Space and Leisure)

Portfolio Holder: Cllr. Simon Betty

Portfolio Holder for: Economic Growth and Investment



Summary:

In late 2023 Picturehouse advised the Borough Council that a decision had been made to close the doors on the Cinema at Elwick Place, Ashford on 4 January 2024. Picturehouse have a lease on the Council owned site, with no break clause, that expires in January 2044.

The leisure offer provided by this anchor tenant, along with the wider economic impact on Elwick Place, is fundamental to delivering a future vibrant town centre site for all who live, work and visit the town centre.

The Borough Council have reviewed the likely financial, social and community impact, of the Picturehouse closing, along with the future potential opportunities should the Borough Council decide to procure the assignment of the lease to a wholly owned company of the Council and take responsibility for the cinema in the short term.

It is recommended to Council that the lease for Picturehouse, Elwick Place, Ashford is assigned to Ashford Cinema Ltd, a company that is already set up and wholly owned by Ashford Borough Council. This will allow time over the next 12 months for a full review and viability study to take place in order for the Council to be in a position to advertise a new recreational lease on a suitable sustainable commercial basis moving forward.

The continuation of a leisure offer provided by the cinema, along with the wider economic impact on the other businesses in Elwick Place, plays an essential part in delivering a future vibrant town centre.

Key Decision: No

**Significantly
Affected Wards:**

All wards and specifically Victoria Ward

Recommendations: The Council is recommended:-

- I. To agree the assignment of the Picturehouse lease to Ashford Cinema Ltd (ACL) as part of a transfer by Picturehouse to ACL of all cinema operations and assets and all staff identified within the TUPE process, to support the future vitality and economic development of Ashford town centre.
- II. To agree to release Picturehouse and its lease guarantor, Cine-UK Ltd., from all liabilities and obligations of the lease, and also to grant a rent free period for Ashford Cinema Ltd of a maximum of 12 months, both to take effect from the completion of the lease assignment.
- III. To agree to grant a £100,000 operational Loan to Ashford Cinema Ltd which will be secure by way of legal charge against the assets within the cinema.
- IV. To agree spend to underwrite all operating deficit for Ashford Cinema Ltd for a period of up to 12 months from the assignment, including NNDR and Service Charge liability.
- V. To agree, in principle, to the provision by the Council of services, such as Human Resources, IT, corporate and financial services to Ashford Cinema Ltd and to delegate authority to the Chief Executive, Deputy Chief Executive and Section 151 Officer, in consultation with the Leader of the Council, the Solicitor to the Council & Monitoring Officer, and the relevant Corporate Director and Assistant Director, to agree the terms and condition, including charges (if any), for such services.
- VI. To note Ashford Cinema Ltd will report to the Trading and Enterprise Board (TEB) in accordance with its existing Terms of Reference, including the power of appointment by the TEB the shareholders representative.
- VII. To note the aims and objectives of Ashford Cinema Ltd and these being the same aims and objectives of Ashford Borough Council.
- VIII. To note the urgency decision made by the Chief Executive taken on 05/02/2024 to set up and appoint the Directors and Secretary of a new company

Ashford Cinema Ltd (Company Number 15473154)
wholly owned by Ashford Borough Council.

- IX. To agree that Ashford Cinema Ltd enter into a service agreement with The Big Picture Limited for The Big Picture to manage the day to day operation of the cinema on behalf of Ashford Cinema Ltd.
- X. To delegate authority to (a) the Chief Executive, Deputy Chief Executive and Section 151 Officer, in consultation with the Leader of the Council, the Solicitor to the Council & Monitoring Officer, and the relevant Corporate Director and Assistant Director to take any other decisions ancillary to the above and in line with the proposals outlined in this report and its Appendices, and (b) the Solicitor to the Council & Monitoring Officer, in consultation with the Deputy Chief Executive and Section 151 Officer and the relevant Corporate Director Assistant Director, to negotiate and enter into any deeds, agreements or other documents necessary or appropriate to achieve the same.

Policy Overview:

A key objective in the Corporate Plan is Targeted Growth supporting a thriving, productive local economy supporting a range of business and industry offering good work to local people and is recognised as a high quality visitor destination.

- TG1: Increase productivity and job opportunities and the establishment of sustainable, knowledge based and creative industries in the borough.
- TG3: Strengthen local supply chains and increase resilience of the local economy.
- TG4: Support Growth in the visitor economy
- TG5: Stimulate vibrant, accessible and sustainable Town Centres for residents, visitors and businesses

Financial Implications:

The Council will be responsible for the operating deficit of Ashford Cinema. The financial forecasts for the next 12 months are attached at **Exempt Appendix 1**. It is anticipated that by 25/26 there will be a new Leisure Operator in place producing a rental income to the Council.

Decisions have already been taken 'at risk' by Management Team on the preparation and set up costs in order for a smooth transition should Council agree with the recommendations in this report. These prior commitments, for information only, are as follows:

- £50,000 external legal fees (Trowers & Hamlins)
- £12,500 per month expert industry management fees for 6 months from February 2024 (The Big Picture)
- £95,000 set up costs including IT, Branding, suppliers

etc

Legal Implications: Under Section 1, Localism Act 2011 (the 2011 Act – General Power of Competence) the Council has the ability to incorporate a company and extend loans to it. Also under section 145(1), the Council has the power to secure the provision of a “theatre, concert hall, dance hall or other premises suitable for the giving of entertainments or the holding of dances”... The reference to "other premises suitable for the giving of entertainments" is sufficiently wide to encompass a cinema. The Council should also have regard to its fiduciary duties when pursuing the objectives set out in this report, by balancing the financial risks associated with the proposed arrangements against the benefits anticipated. The risk assessment section of the report should be carefully considered. Specialist external legal advice received by the Council on the proposals and their legal implications will be circulated as an exempt appendix to the report as soon as possible.

*Text agreed by
Principal Solicitor on
[date]*

Equalities Impact Assessment: N/A

Data Protection Impact Assessment: A data protection impact assessment will be developed as part of the due diligence, in the operation of the company and the assignment of the lease, should the recommendations be agreed.

Risk Assessment (Risk Appetite Statement): A ‘do nothing’ approach may provide a lower risk, in particular, financially in the short term, with the possibility that we can maintain a rental/service charge income, and payment of rates, from a closed asset. However, we will then not have an attracting, operating anchor tenant to ensure the vibrancy of the wider Elwick Place venue. The negativity of the closure of the cinema will have a far reaching impact on the wider leisure offer at Elwick Place in addition to the removal of a continued cinema offer, job losses and the 100,000 yearly leisure visits to the cinema and cafe. This anchor tenant is key in ensuring the vitality of other units let at Elwick and without an operating cinema as that anchor tenant, it will increase the difficulty of securing viability for current and future tenants on the remainder of the site. There is also the potential risk that Picturehouse could refuse to meet its lease obligations including refusing to pay rent, rates and service charge leaving the Council with the need to take legal proceedings against Picturehouse and the guarantor, Cine-UK Ltd. to enforce the lease obligations.

Continuing to run the cinema provides a platform of opportunity to build on and it should be noted that a similar site in Sittingbourne has approximately 200,000 visits a year.

The Picturehouse, Elwick Place also offers a café and spaces that are often used by community groups such as the Future Dance Academy, any closure would have a negative effect on these groups and the positive social outcomes such groups provide.

A lengthy closure is likely to put in place barriers that will prevent new business opportunities applying to operate from Elwick Place or for any business operating here to have the need to request the council for further financial support to survive. The advice provided to us to date from industry experts states that closing the cinema, will make it virtually impossible to rebuild the customer base and open again as a cinema.

It should be noted that the outcome, after the initial review, could be that the cinema is not a commercially viable operation and consideration to a future closure may be required. However, officers believe that this is mitigated by Ashford Cinema Ltd committing to review all future leisure opportunities and not just that of a six screen cinema. In addition, the Council have already been approached by a number of Leisure operators wishing to enter into dialogue regarding future long term opportunities should Ashford Cinema Ltd be responsible for the cinema in the short term.

Sustainability Implications:

Ashford Cinema Ltd will aim to work in the most environmentally sustainable way possible in line with Ashford Borough Council's objectives. Future considerations will include Green Leases and maximise utilisation of new decarbonisation technologies.

Other Material Implications:

Staffing – all staff subject to TUPE will remain on the Picturehouse terms and conditions on transfer into Ashford Cinema Ltd.

Community Safety – should the 'do nothing' option be preferable and the cinema were to close, then Members should note the likely negative impact on the asset and rise in anti-social behaviour that vacant properties attract. Access for all – Picturehouse is well used by local residents within the town centre who don't have access to a car or easy access to public transport. In addition, it has been noted that the Picturehouse is an environment that is open and welcoming to a number of people who struggle with environments that have 'quick through foyers' such as cinemas with Imax and 4D. The closure of the Picturehouse would have a significant impact on this minority group. The Cinema also offers a range of inclusive screening options such as subtitled (captioned), autism friendly and dementia friendly. These would continue if Members decide to agree to the Ashford Cinema Company operating this site.

**Exempt from
Publication:**

YES: Appendix 1 – Financial Implications
Not For Publication by virtue of Paragraph 3 of Part 1 of
Schedule 12A of the Local Government Act 1972 and the
public interest in maintaining the exemption outweighs the
public interest in disclosing the information

**Background
Papers:**

Appendix 2 – Measuring the economic value of cinema
venues
Appendix 3 – Structure chart of the recommended
Transaction

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Report Title: Picturehouse Elwick Place, Ashford

Introduction and Background

1. In January 2019 Picturehouse were granted a 25 year lease for the cinema at Elwick Place, Ashford with a lease end date of January 2044. As Members are aware, this lease was not negotiated by the Council but by Stanhope Developers, who built the centre.
2. Members will be aware that since Picturehouse was granted the lease, the world has come through a pandemic, the impact of which could not have been anticipated at the time the lease was granted. This undoubtedly has had an effect on the previously anticipated operating position of this venue. Nonetheless, the importance of maintaining cinemas both nationally and locally as cultural hubs is widely acknowledged (see report from the British Film Industry, and the reasons and significance for the report, noted at para 11). Understanding that importance, informs the actions of officers of the council in bringing this item forward for Members consideration.
3. In late 2023, Picturehouse informed the Borough Council that they were facing an unknown future, that a restructure of the entire UK Cineworld and Picturehouse estate was planned for early 2024, that all cinemas failing to produce a reliable profit would close immediately and that the subject falling into this category was already scheduled for closure on 4 January 2024. This would result in all staff being made redundant and an unknown situation with regards to the rental income, service charge and NNDR liability. The rental income and cost liability situation would not be fully known until such time the restructuring advisors were instructed and had completed their work and we are advised on the company restructuring position.
4. Should the cinema close, it would significantly reduce footfall to Elwick Place and in turn impact the ability to let a number of empty units as well as sustain the tenants in situ. The closure of the cinema would impact on the overall future viability of Elwick Place and the leisure offer to those who work, live and visit the borough. Advice received to date also states that allowing the cinema to cease operating would jeopardise the likelihood that this venue would ever reopen for the same use. Building on the current footfall with an aim of doubling that with a potential wider leisure offer is likely to sustain the business but starting from scratch, is unlikely to be a viable option. The increased footfall would have a positive impact on the wider town centre offer and night time economy.
5. In line with the Borough Council's objectives, and the appetite to support investment into the Town Centre, officers entered into initial discussions with Picturehouse to understand other options available, rather than merely accepting closure of the cinema. The two options provided by Picturehouse, that would stop the closure, were for either ABC to enter into a management agreement with Picturehouse whereby the Borough Council paid the

Picturehouse to continue to run the cinema or for the lease to be surrendered/assigned back to the Council.

6. Following external legal advice and to ensure the continuation of a cinema offer in Ashford Town Centre the option of an assignment of the lease to a company, fully owned by the Council, has been pursued and considered in further detail to present to Council for decision. This also provides the Council with the time and ability to maximise the future potential of the commercial lease and the leisure opportunity at Elwick Place.
7. The Chief Executive exercised her urgency powers to set up a new company (Ashford Cinema Limited), in order to facilitate a continued operation of the cinema, should Council agree the recommendations within this report.

Proposal

8. The proposal is for the Council to approve the assignment of the Picturehouse Lease, along with the TUPE of all staff (approx. 4 FTE ad 22 x 16hr contracts) and the day to day operation of the Cinema into Ashford Cinema Ltd, a company wholly owned by Ashford Borough Council.
9. The operation of the cinema by ACL will be a short term arrangement, maximum of 12 months, in order for Ashford Cinema Ltd supported by industry professionals, The Big Picture, to review the leisure and commercial opportunities and propose a suitable and sustainable way forward to Ashford Borough Council.
10. Initial views from The Big Picture are that the asset is underutilised and there is significant scope to increase footfall, and in turn, revenue, customer experience, community space, and a destination venue with the right leisure offer.
11. Cinemas are important cultural and community assets that are widely accessed and allow the public to experience a broad range of culture and entertainment. They provide social spaces, offer opportunities for community cohesion and learning, and drive commercial activity that supports other local businesses which in turn makes an important contribution to revitalising high streets. A recent study (Nov 2023) by the BFI and Creative Policy and Evidence Centre found that (using valuation techniques derived from the DCMS' Culture and Heritage Capital framework) cinemas delivered significant and positive wider value to society equivalent to £600,000 per cinema every year. "Almost two-thirds of survey respondents (quoted in the study) stated that the cinema venue contributes to 'their sense of pride in the area where they live' and beyond this, the report establishes – but does not quantify the impact that cinemas are likely to drive footfall and spending in other venues, indicating that they can make an important contribution to revitalising high-streets." This report is the first of its kind, post pandemic and highlights the importance of the social and cultural role of cinemas in the cohesiveness of our communities. See **Appendix 2**.
12. To report to Cabinet at the end of the review period (no longer than 13 months from the date of this report) with findings and recommendations. The outcome of this review will recommend future options

Equalities Impact Assessment

13. N/A

Consultation Planned or Undertaken

14. A confidential presentation with Q&A to Members took place on 13th February 2024. A further confidential presentation including the Business Plan with Q&A to Members is due to take place on 12th March 2024.
15. Statutory TUPE consultation with all affected staff will take place should the recommendations in this report be agreed.

Other Options Considered

Do Nothing

16. Ashford Borough Council 'do nothing' and enforce the conditions of the lease and await to see what Picturehouse decide to do. There is an understanding that there are a number of options that could result from the 'do nothing' position.
17. The information received from Picturehouse is that Picturehouse, Elwick Place would close and indeed would have closed on 4th January had officers not engaged in discussions. The Borough Council as landlord could simply await the next steps taken by Picturehouse in the process to understand what, if any monies would be received, in line with the lease obligations to 2044 and in addition if the contents and assets, contained in the cinema, would be sold off. This would result in a large empty anchor tenant unit at Elwick Place with no opportunity, at this time, for the Borough Council to make any decisions on the future of the asset or the operation until such time as the process is complete. In the longer term this could result in the lease being sold on or assigned to another entity, subject to consent being obtained from Ashford Borough Council (not to be unreasonably withheld or delayed), as required under the terms of the lease. It should be noted that there is also the potential risk that Picturehouse could refuse to meet its lease obligations including refusing to pay rent, rates and service charge leaving the Council with the need to take legal proceedings against Picturehouse and the guarantor, Cine-UK Ltd. to enforce the lease obligations.
18. It is acknowledged that the 'do nothing' option, the short term financial impact on the Council may not be as bad – see the financial **Appendix 1**. However the actual impact is unknown and would not be known until the next steps are taken by Picturehouse and the outcome of the overall restructuring position was complete.
19. Whatever the financial position and income from Picturehouse the overall financial position along with the leisure offer, would be severely affected by closure of the cinema. The impact on the wider Elwick development and ability to lease further units along with maximising commercial rental income

due to reduced footfall would create a risk to the overall commercial income for the Council and the viability and the future of the site as a whole.

Management Agreement between ABC and Picturehouse

20. This option was not considered in detail due to the level of ongoing risk, impact on future opportunities and sustainability. Effectively the Borough Council would be paying Picturehouse to run their Cinema with very little or no incentive to attain an attractive commercial position for taxpayers of the Borough. This would not be a financially sustainable position for the council. This would not provide the opportunity to increase the leisure offer at Elwick Place and develop the venue and offer, as part of the wider community. Therefore this option would do nothing to reduce the risk of the venue closing their offer in the future, other than the council being faced with additional burden to the council tax payer.

Surrender of Picturehouse Lease and negotiate Lease with new operator now

21. This option would provide very little opportunity for the Council to understand the business viability, the opportunities to sweat the asset and realise a strong commercial rental income at this time. This could result in an underutilised lease arrangement without the opportunity to maximise the commercial and community offer. Any future long term arrangement needs to not only maximise the commercial asset income but also be considerate of the wider social benefit that a lease of this standing is able to provide. The short term closure of the cinema, whilst a new operator was found and a lease agreed, would present a risk to the asset and it would also be difficult for the new operator to restore the customer base alongside any capital costs that may be incurred for the Picturehouse owned assets.
22. Any other options suggested by Members, will be addressed in a subsequent exempt appendix.

Reasons for Supporting Option Recommended

23. The reasons for supporting the recommendation to agree to the assignment of the Picturehouse Lease to Ashford Cinema Ltd are as follows:
 - This shows the Council's approach to maintaining a prosperous Town Centre and delivering on the Town Centre reset.
 - Town Centres are evolving and changing to more experiential offer retention of the cinema will be key in retaining this use as a destination to drive footfall.
 - Continuation of a leisure offer including cinema and café for Elwick Place and Ashford Town Centre.
 - Continued offer for warm and welcoming space for charities, local businesses and the local community.
 - Keeping the cinema open will retain and support the existing tenants in Elwick Place and is essential in delivering on completion on current lease negotiations and attracting new tenants.

- Removal of the unknown financial risk to the Council of future insolvency or restructuring by Picturehouse or Cine-UK, through taking control of the cinema and releasing them from the lease.
- Retaining the current customer base to expand upon increasing the ability to maximise a positive outcome.
- The opportunity to review the profit and loss alongside future opportunities in order to maximise the leisure offer at Elwick Place.

Next Steps in Process

24. If the recommendations are supported the next steps will be:

- Asset transfer agreement between Ashford Cinema Ltd and Picturehouse.
- Assignment of the Picturehouse lease at Elwick Place to Ashford Cinema Ltd including the TUPE of staff and the day to day operation of the cinema, café and room bookings.
- Loan agreement between the Council and Ashford Cinema Ltd.
- Service agreement (for corporate services) between the Council and Ashford Cinema Ltd.
- Delivery in line with the Business Plan between ABC and The Big Picture.

Conclusion

25. Elwick Place was designed to be a destination leisure offer for Ashford town centre. It is reasonable to state that the world wide pandemic and the recent Hollywood writers' strike has had an impact on the ability of the cinema, at this venue, to flourish. However, as noted in the British Film Industry report from November 2023 the importance of a town centre cinema offer, as a social and cultural centre around which to improve community cohesion, should not be underestimated. Members will see from the BFI report that using agreed methodology the value to the local economy has been evidenced.

From early indications and industry comparators (where a town centre cinema sits alongside an enhanced leisure offer), there should be the opportunity to deliver more for the community and provide a longer term sustainable business for the cinema at Elwick Place. Currently, it is suggested that the cinema can become that valued cultural hub, delivering a sense of place that brings the community together and becomes a stable long term anchor for the wider Elwick Place offer.

Therefore, we look to Members, as community leaders, to work with officers on the longer term vision for the Ashford cinema, with its focus on becoming that cohesive community hub.

Portfolio Holder's Views

"I fully support this proposal to ensure that a cinema presence is maintained in the town centre. The continuation of a leisure offer provided by the cinema, along with the wider economic impact on the other businesses in Elwick

Place, plays an essential part in delivering a future vibrant town centre. The widely reported weak financial position of Picturehouse and its parent company places serious doubts over the continuing viability of the existing cinema operation which exposes the Council to potential financial risk” Cllr Simon Betty, Portfolio Holder for Economic Growth and Investment

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