

## **CABINET**

### **21 JULY 2022**

## **MALVERN HILLS ART COLLEGE**

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### **Relevant Cabinet Member**

Cllr Marc Bayliss

### **Relevant Chief Officer**

Strategic Director of Economy and Environment

### **Local Member**

Councillor Beverly Nielsen

### **Recommendation**

**1. The Cabinet Member with Responsibility for Economy Infrastructure and Skills recommends that Cabinet:**

- (a) Allocates £0.4 million from the Open for Business reserve as a grant to a third party, Malvern Hills Arts & Community College Limited, in order to enable that Company to purchase the Malvern Hills Community College site on condition that the limited company provides an arts skills programme from the site to meet the need of the community. Funding will be committed in partnership with Malvern Hills District Council and an external funder;**
- (b) Authorises the Strategic Director of Commercial and Change in consultation with the Cabinet Member of Economy Infrastructure and Skills to negotiate and agree security on the property with the other funders in order that the Council is able to reclaim any (or part) of the County Council's investment, should the Malvern Hills Arts & Community College enterprise not be delivered or ceases delivery at a future point; and**
- (c) Authorises the Strategic Director of Commercial and Change in consultation with the Cabinet Member of Economy Infrastructure and Skills to agree Heads of Terms with the partners engaged in purchasing the site and building.**

## Why are these decisions important?

2. A skills shortage has been identified in Malvern for arts that will enable the local community to build, and support the Council's corporate plan objectives, employment and well-being. It is important that these decisions are made now to progress the project to enable the Malvern Hills Arts & Community College Limited, as an external party, to negotiate with Warwickshire College Group for the sale of the College site. It provides certainty that the funding partners, of which Worcestershire County Council would be one of three (including Malvern Hills District Council and the Bransford Trust) enable the reopening of the College. Discussions with the Warwickshire College Group are progressing with the Draft Heads of Terms being the next step to agreement.

## Background

3. In November 2020, Warwickshire College Group wrote out to all stakeholders that following a review of activity of the organisation following the pandemic, the Corporation Board of the College had concluded that the structure of delivery would change, while preserving provision for students, wherever possible.

4. After the March 2020 pandemic first lockdown Malvern Hills College did not reopen in September 2020, unlike other educational establishments. This was based on the demographics of the students in the full cost recovery courses and the small number of Government funded students who had applied to Malvern Hills College to study at the college from September 2020.

5. The College has a long history in Malvern, which dates back to 1886. In the past it has been in operation and ownership of Worcestershire County Council and Malvern Hills District Council. When transferring the building to Evesham and Malvern Hills Further Education College Corporation in 2008, the former Further Education Establishment before the merger to create South Worcestershire College and the subsequent merger with Warwickshire College Group, Malvern Hills District Council placed a covenant on the building restricting its use to further and higher education, training and ancillary educational purposes. As a matter of general policy, provision of this sort is delivered by the market. The Council has a duty to ensure sufficiency of provision, but it is not considered that the Council has a specific 'duty' to ensure that the College remains in operation. However, the Council has powers under the General Power of Competence in the Localism Act 2011 to provide support.

6. There are certain conditions under which a change of use is considered acceptable under the covenant.

- a) that the Learning and Skills Council (or any successor in function) has properly determined that there is no longer a functional need for a college in Malvern; or
- b) that the further and higher education and training provided at the college has been relocated to an alternative site within or adjacent to Malvern (as approved by Malvern Hills District Council)

7. Following a change of use, a 50/50 clawback following any uplift in the value of the buildings is anticipated between Malvern Hills District Council, as the covenant's originator, and the owner at the time. The covenant also states that prior to any future sale of the College, Malvern Hills District Council must be informed to ensure continuation of the covenant. This overage provides a degree of cover to Worcestershire County Council should the Community College company fail, there could be an opportunity to reclaim investment behind Warwickshire College Group, the Bransford Trust and Malvern Hills District Council.

8. Following Warwickshire College Group's closure of the College, a local campaign group, 'SOS Malvern College', have come together to explore the re-opening of the College to deliver a predominately arts based, fully costed, adult led offer for Malvern residents and individuals across the Worcestershire and indeed in the neighbouring counties.

9. The Campaign Group is established and has presented detailed proposals to key funders that they think are worthy of financial support to retain an arts and creative educational presence in Malvern.

10. Malvern Hills District Council, Worcestershire County Council and the Bransford Trust have been approached to pledge financial contributions to the College which are essential to their plans in the short term. Discussions between the Warwickshire College Group and the three main stakeholders have been ongoing for approximately 12 months.

11. Other local Further and Higher institutions have been approached to operate the College, but none have taken this opportunity to increase their estate and provision in Malvern due to financial and operational matters within these institutions.

### **Malvern Hills ARTS and Community College Limited**

12. From the Campaign group to save the College, a new Company has been established which has former managers and staff from the site included in its management team. A Board of mixed experience and representation will be recruited to provide strategic guidance and overview of the College. Discussions are ongoing about whether Worcestershire County Council would be represented on the Company Board. The view of Cabinet is that this would be best served as a voting member, and discussions will be had with the Company regards this. If this a position was taken up it is strongly advised that the key competence looked for in the Board representative from the Council would be financial and/or educational skills to protect the security of the Council's investment.

### 13. Progress to date

The following activities have been completed or are underway:

- a. Discussions with the Warwickshire College Group and draft Heads of Terms have been drawn up;
- b. Agreed a purchase price for the building as part of the Heads of Terms with WCG;
- c. Building surveys completed by the Bransford Trust;
- d. Business Plan with financial forecasts cover best, worse and expected cases;
- e. Governance and Shadow Board arrangements agreed;
- f. A Friends of Malvern Arts & Community College group established to bring in community funding and volunteer support;
- g. A review of the curriculum to bring in other commercial revenue for activities and facilities on site;
- h. Identification of new commercial activity to support the emerging business plan and financial plan.

14. The new College operation will not initially be a provider of government funded courses. Instead, its delivery will be a commercially targeted enterprise for adults. It would also not be subject to financial regime of a Further educational institution or the quality and inspection standards such as Ofsted. Clearly it would have to operate within Health and Safety and other applicable legislation.

15. The new operation has committed to benchmark against similar Community Colleges which operate such as Heatherley School of Fine Art, West Dean Arts College and other examples across the country.

### **Independent Review**

16. Worcestershire Council requested that Worcestershire Local Enterprise Partnership (WLEP) commission an independent review of the business plan and financial plan for the new College. This concluded that the College have presented a series of ideas and proposals to accompany a business plan that warrants support and specific financial contributions in line with the previous sums that have been discussed with the College.

17. This was based on the fact that the core offer is developed from the most successful and well-established curriculum area of the former College. However, there is a commitment to refreshing and expanding the offer to make it more relevant to students and market demand.

18. Also, the report highlighted a recommendation within the new College team to become more commercial and raising income from non-education activities. Finally, there is collective enthusiasm, expertise and networks to make the College's ambitions and plans a reality. The Company is actively working on WLEP recommendations and a County Council Board Director would help secure the Council's investment.

## **Delivery Timescales**

19. Subject to the conclusion of the activities outlined above, the following timetable is currently proposed:

- a) Approval of funders through decision making process expected to be complete August 2022
- b) Sale agreed with WCG Autumn 2022.
- c) Malvern Hills Arts and Community College opens in March 2023.

## **Legal, Financial and HR Implications**

20. Legal issues and risks are outlined in this report (e.g. subsidy control). There will need to be appropriate legal agreements in place to deliver the funding, clawback events and security.

21. The Council would be providing a grant to the Malvern Hills ARTS & Community College Limited as part funding to purchase the building. Whilst the building would be owned by the Company the Bransford Trust, Worcestershire County Council, along with Malvern Hills District Council would take a charge against the building if the delivery of an Arts and Community College were not to be set up or to cease at a future date.

22. The early draft Heads of Terms discussed with the Warwickshire College Group identify that the Group would insist on 100% overage on the site if it were sold for another purpose within five years tapering to a reduced amount each year over the next five years. There is also a covenant dictating recovery of proceeds of overage to Malvern Hills District Council. Despite this based on independent valuation of the land, it is reasonable to assume that the County Council would be able to recover all or the majority of the grant if a skills provision was not provided from the site at any point and the site disposed of, subject to risks outlined below. The costs incurred with any disposal or recovery process may be additional costs if this were to arise and would need to be funded at that point but are likely to be immaterial to the deal.

23. The Heads of Terms must make clear that future liability for the site rest with the owner of the building and the County Council's costs for this proposal are fixed per the recommendations of this report. We understand any potential further funding required would be sought by the Company from either charitable sources or borrowing and not the County Council.

## Risk Implications

24. Risk to delivery and consequences are as follows:

- The Covenant. There needs to be clarity from the Malvern Hills District Council legal advice on the strength of the Covenant. If there is demonstrable support from key potential funders this will indirectly strengthen the details of the covenant. Warwickshire College Group are challenging the need for Further, Higher and Education on the site. If this is successful challenged the Malvern Hills Arts And Community College would look to find another location, as the redevelopment value of the site would increase if freed from the user restriction.
- There is a business plan in place as developed by the College and this has been reviewed by WLEP. The finance projections assessed as produced by the Malvern Hills Arts & Community College do identify a number of financial risks as well as opportunities that will need to be managed by the Group in order to maintain financial sustainability and delivery. However, it has to be recognised that this a commercial venture and it is possible that the venture will not succeed. Members should note the following areas which could affect the viability of the college:
  - staffing level being insufficient to deliver the service
  - property maintenance costs rising
  - property compliance specialist e.g. H&S costs
  - Income requirement not being achieved (the student requirement is steep and a need for income from other sources)
  - Equipment costs rising
- If the College were unable to start trading or cease trading then the Council's investment risk is protected by its charge on the building. Although, the proposal is that The Bransford Trust will take priority (£600,000) before the two Councils - Worcestershire and Malvern Hills District Council second priority (£400,000 each). The total contributions exceed the value of the property (£1.2M), and there may be other prior claims (e.g. tax liability). Accordingly, there is a risk that the Council may not recover its full £400,000. The Council's risk in this case is also greater than another funder, but the risk is that the recovery is reduced due to other preferential claims such as from HMRC, which again is why a Board Director representee is helpful to focus on the Company's viability.
- Security of funding may constrain the College's ability to raise other funding but it is necessary to protect the public investment as far as is possible, and we understand that the charitable partner involved in this partnership is prepared to place a great sum in to the College maintenance if the sale is able to progress.
- Implementation of the project will need to accord with the notification requirements of the emerging Subsidy Control regime.

## **Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments**

25. No impacts have been identified

### **Supporting Information**

- None

### **Contact Points**

#### Specific Contact Points for this report

Gary Woodman, Interim Assistant Director of Economy

Tel: 01905 845600

Email: [gwoodman2@worcestershire.gov.uk](mailto:gwoodman2@worcestershire.gov.uk)

### **Background Papers**

In the opinion of the proper officer (in this case the Strategic Director for Economy and Infrastructure) the following are the background papers relating to the subject matter of this report:

Worcestershire LEP Commissioned Independent Review of the Business Plan