



# Scrutiny review of the disposal of the former St. Anne's School site, Lewes

## Report by the Review Board

of the Audit, Best Value & Community Services Scrutiny Committee

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## Context

1. St. Anne's School site is located on Rotten Row, Lewes. The County Council closed the school in September 2005. The school site consists of several buildings situated on approximately four acres of land accessible via Rotten Row. There was no perceived obvious future use for the site due to the restricted road access and the number of tree preservation orders in place.
2. For several years until 2011, East Sussex County Council (the Council) maintained the site on a basic 'wind and water tight' basis. Public access was not physically restricted and the local community used the site informally. In April 2011 a bout of vandalism of the roof of the buildings led to a decision to seal and close the site.
3. In the early summer of 2011, a group of climate change activists occupied the site stating that they wished to secure its future as a community asset. The illegal encampment was removed in June 2011.
4. The County Council convened two public meetings in Lewes Town Hall on 7 and 27 July 2011 to enable residents and community groups to discuss options for the interim community use of the site. A community-led St Anne's Steering Group emerged to assist with the development of plans for the short and long-term use of the site.
5. On 23 October 2012, the Lead Member for Community and Resources approved a proposal to dispose of the site for community use in recognition that was the most valuable non-residential use for the site.
6. The Council published the sales particulars for the site in January 2013 and invited expressions of interest from voluntary and community organisations. Three organisations completed applications: Subud, YMCA and Lewes Community Land Trust (LCLT). The Council gave all applicants the opportunity to amend or revise their bids prior to the formal deadline for submissions on 7 June 2013.
7. Following the deadline, a Bid Assessment Panel was established comprising four Council officers, a representative from 3VA and a representative from the St. Anne's Steering Group. On 17 June 2013, the Panel unanimously recommended the bid submitted by Subud.
8. Shortly afterwards, the Council received a challenge from LCLT about wording in the bid application form. The form was derived from a standardised bid application form produced by Localities, an organisation specialising in community asset transfers. It contained a statement inviting requests for purchase of the asset by "voluntary, community or not for profit organisations, *unless the organisation is promoting political or religious activities*". The Council halted the bidding process to review the legality of the wording and its impact on the process.
9. Following an assessment, the Council concluded that the wording had been included in error and had it not been spotted may have led to the Council breaching its duties under the Equality Act 2010. However, the inclusion of the wording was considered not to have affected any of the bids.
10. The bidding process was resumed and the Lead Member for Resources approved Subud as the preferred bidder on 29 October 2013. The Council then set about agreeing the heads of terms of the sale with Subud, which was delayed in part by the parties' joint efforts to safeguard community use of the site.
11. In late August 2014, members of the public and a County Councillor began to raise a number of concerns alleging that the bidding process had been flawed and that the sale of the site to Subud had been in breach of the Equality Act 2010.

12. On 5 September 2014, in response to these concerns, the Audit, Best Value & Community Services Scrutiny Committee agreed to establish a scrutiny review board to undertake an analysis of the bidding process. The Lead Member for Resources attended the meeting and welcomed the decision to review the process.

### **The Scrutiny Review Board**

13. The Scrutiny Review Board comprised two members of the Audit, Best Value & Community Services Scrutiny Committee: Cllr John Barnes and Cllr Jeremy Birch, and a substitute for the Chair of the Committee: Cllr David Tutt. Cllr Tutt was elected as the Chair of the Review Board.

14. The agreed scope of the Review Board was to undertake an analysis of the process involved in selecting a preferred bidder to take over the site of the former St Anne's school in Lewes for the purpose of providing an asset for the community. The specific issues that the Review Board considered were asked to consider were:

- a) The extent to which the St Anne's Steering Group was representative of the community.
- b) The advice given to each bidder.
- c) The extent of the Council's research into the policies (particularly equal opportunity policies) of the bidders.
- d) How each bidder was assessed and scored.
- e) The composition of the Bid Assessment Panel.
- f) The reasons for disposal to an 'under-bidder'.
- g) The level of community benefit arising from the successful bidder.
- h) How the Council will protect community benefits, equality of access and guard against gains from future housing development.

15. The Board was established on the basis that:

- it had no authority to overturn or call-in the decision taken by the Lead Member for Resources on 29 October 2013;
- it was not intended to delay the agreement of the heads of terms for the disposal of the St. Anne's School site to Subud;
- it would make its recommendations to the Lead Member for Resources to improve the process of community asset transfers in the future.

16. The Board invited all interested parties to submit comments and evidence and agreed to hold its evidence gathering in public as far as practicable. All non-exempt information considered by the Board was published on the Council's website during the course of the review.

17. The Review Board held three public meetings: two evidence-gathering sessions on 15 October and 21 October 2014, and a final meeting on 14 November where it agreed that it had received sufficient written and oral evidence to reach a conclusion about each of the issues set out in the scope of the review.

18. This report sets out the findings, conclusions and recommendations of the Review Board for submission to the Lead Member for Resources for consideration.

## Findings and conclusions

### a) The extent to which the St Anne's Steering Group was representative of the community

19. The St Anne's Steering Group was established in 2011 and first met 13 October 2011 with the remit:

- To ensure that the communities of Lewes have opportunities to develop and deliver ideas and activities for the short term (minimum 3 years) use of the St. Anne's site grounds.
- To work with partners and the County Council (as landlord) to investigate potential opportunities for the long term use of the site (both grounds and buildings). Any short-term use cannot prejudice any potential long-term use of the site (grounds and buildings).

20. The County Council helped to establish the Group and assisted with suggesting a scope. Council officers attended the meetings of the St. Anne's Steering Group as advisers rather than members; their role was to facilitate, enable and advise the Group members in carrying out their agreed roles.

21. 3VA was the St. Anne's Accountable Body and the Interim Lease Holder of the site. 3VA provided advice, developmental support and administrative support to the Group.

22. Apart from the 12 December 2012 meeting, all the meetings of the Steering Group were quorate. The quorum was set at 50% of membership at the 24 September 2012 meeting.

23. Significant efforts were made in the lead up to the formation of the Group, and during its lifespan, to encourage as many people and interested groups as possible to get involved. Well-publicised public meetings were held on 7 and 27 July 2011 in Lewes Town Hall where local residents and other groups were actively encouraged to take part in the Steering Group. There is no evidence that anyone was excluded from participating. Indeed, when membership declined in mid-2012, the Group actively sought new members.

24. Not every affiliated organisation was represented at every meeting of the Group. Some had indicated their wish to be kept in touch by receipt of minutes rather than attendance. There is no evidence to suggest that the affiliated organisations were not aware of the Group's proceedings through notes of the meetings and other publicity. Any affiliated association or residents' group could therefore have voiced its views at any stage if it was concerned about the direction the Group was taking.

25. The County Councillor for Lewes Division was fully involved and played an active role as a member of the Steering Group throughout its life. However, the County Councillor for Ringmer and Lewes Bridge was not a member; she stated that she had not been specifically invited to join and that she had not joined voluntarily because she was not aware of the full extent of the remit of the Group in considering the long term future for the site. There is some evidence that County Council officers normally treat the member representing the ward/division in which a facility lies as the 'local Member'. Whilst the site lies within the Lewes County Division, some residents of Ringmer and Lewes Bridge considered that they were affected by the decision and had made representations to their County Councillor.

26. The Review Board concluded:
- There is no evidence that the St. Anne's Steering Group was dysfunctional. Members of the group demonstrated significant time commitment, enthusiasm and clarity of focus. The Group's remit was clearly stated and its members appear to have kept an open mind about the possible outcomes and based its views on the information it received.
  - It is probably impossible to create a steering group such as this that is ever going to be fully representative of every community interest. However, the St Anne's Steering Group was representative of those in the community who had indicated an interest in taking part in shaping the future of the St Anne's site.
  - Reasonable attempts were made to encourage anyone with an interest to take part. However, there is an argument to consider widening the definition of "local Member" in similar future circumstances.

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## Recommendation

### 1. When establishing any future similar steering group to consider a community asset transfer, the Council should:

- a) ensure that all local Members in the vicinity, and not just the Member in whose division the facility lies, are invited to become involved in the discussions.**
- b) encourage any future equivalent 'steering group', early in the process and as an ongoing exercise, to actively consider the extent to which it is fully representative of the community and to take necessary steps to ensure that all appropriate bodies have been invited to take part.**

### b) Advice given to each bidder

27. Bidders have expressed concerns that the advice provided by the Council during the bidding process was inconsistent. The YMCA and LCLT each made the following objections about the process in August 2013:

- "There was a lack of clarity as to the parameters of the bid and what the Council wanted to achieve through the transfer of the site. We had contradictory advice to whether or not housing might be included on site for instance."
- "We were told that there may be an option to acquire the St Anne's Crescent overflow car park and develop this as part of the bid. Again, it was not made clear whether this was a definite option."
- "We were told that the shortlisted bidders should produce an outline bid and then we would be invited for interview, through which our bid could be refined if necessary. This [interview] did not happen."
- "Sussex Central YMCA and the Lewes Community Land Trust have asked for feedback from our bids which has not been received to date." (See paragraph 34).

28. The evidence suggests that the County Council provided bidders with a range of support and advice, most notably access to the advice of an estates surveyor, from the start of the process in January 2013 up until the application deadline on 7 June 2013. The Council also provided interested bidders with the sales particulars of the site and a bid application form. The estates surveyor provided advice in response to the bidder's questions about the application by phone and email and at face-to-face meetings.

29. The estates surveyor met with LCLT three times between January and March 2013, but they did not retain a record of these face-to-face meetings. LCLT states that it was confused about the advice provided. For example, LCLT considers that it was given a positive indication the inclusion of the St. Anne's Crescent overflow car park in its bid would be regarded favourably. However, in an email (dated 28 February 2013), the estates surveyor states:

*“A bid that relies on the value of the St. Anne’s Crescent Car Park site to enable development of St. Anne’ school site would have to be judged against other bids but is unlikely to be considered favourably.”*

30. There does appear to have been confusion amongst bidders in the interpretation of the Lewes District Council’s & South Down National Park Authority’s Strategic Housing Land Availability Assessment (SHLAA), which identifies potential sites to be developed for housing. The SHLAA designates St. Anne’s site, along with the County Hall site, as “developable – suitable but unknown availability”.

31. Advice given to each bidder was not generally shared with the other bidders as the Council reasoned that this could unduly “influence and homogenise” the scheme designs from the different bidding parties. It was also considered that it would have been unfair on the one party if the other parties benefited from the responses provided to a particularly proactive bidder.

32. After the Council had received the first draft of the bids in May 2013, the three applicants were asked to clarify aspects of their bids and were given the opportunity to make improvements prior to the deadline on 7 June 2013.

33. There is no evidence that the Bid Assessment Panel offered bidders the opportunity of an interview. There is no such offer in either the sales particulars or the bid application form, which are the only formal documentation that all bidders received.

34. The Council has stated that it will provide feedback to the losing bidders once the contract with Subud has been finalised.

35. The Review Board concluded:

- The Council provided the three bidders with the same documentation (the sales particulars for the site and the bid application pack indicating that the Council’s purpose was to secure “an asset for the community”) and the same offer of support from an estates surveyor. It was clear from the background information contained in the community asset transfer application form that the bidder would need to identify what planning advice they had sought from the local planning authority.
- Any allegations of varying or confused advice appear to relate to informal conversations at an early stage; the variations occurred primarily because bidders raised different issues that were met with different, but appropriate, responses.
- The offer of an interview with prospective bidders does not appear in any of the documentation seen by the Board and so it remains unclear why a bidder could have harboured such an expectation.
- Telephone and face-to-face conversations between council officers and bidders could, in hindsight, have been documented more carefully to provide a complete audit trail of every interaction.
- Whilst it is understandable that feedback to unsuccessful bidders may need to wait until the contract with the successful bidder has been signed, the long delay in securing the final contract in this case has led the unsuccessful bidders becoming frustrated at the lack of helpful feedback.

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## Recommendation

### 2. In respect of future transactions of this nature, Property Management should:

- a) keep a filed record of all informal conversations between officers and bidder representatives to provide a full and accurate audit trail of advice and information provided to bidders;
- b) ensure that where discussions with one bidder could lead to a potential change in the scope, conditions or physical extent of the asset under consideration, then such advice should be made available to all other bidders;
- c) offer to give unsuccessful bidders the opportunity of feedback at the earliest opportunity.

### c) The extent of the Council's research into the policies (particularly equal opportunity policies) of the bidders

#### *Equal opportunities policies*

36. During the bid assessment process, Bid Assessment Panel members carried out their own independent research into the bidders. In particular, the Third Sector Policy Manager carried out background checks of all three bidders by:

- checking the governance and financial position with the Charity Commission and Companies House;
- seeking the views of the County Council's Equalities Manager in respect of the Council's duty under the Equality Act 2010 (as it applies to bid assessment);
- seeking the views of community and voluntary support organisations, such as 3VA, that were aware of the activities of all the bidders in the community over previous years.

37. The bid application forms requested bidders to indicate whether they had in place (or were considering) an equal opportunities policy, but bidders were not asked to submit a copy of the policy with the application form.

38. In September 2014, allegations were made by members of the community that Subud is an organisation that discriminates against people with specific protected characteristics<sup>1</sup> (See item 15, p.19) and by failing to take account of this information, East Sussex County Council was in breach of its obligations under the Equality Act 2010.

39. In its evidence to the Scrutiny Board, Subud representatives stated:

- That they have never discriminated against any group (with protected characteristics) in the operation of its current site in Lewes. (No evidence was provided to the Board to counter this point despite critical questioning of witnesses).
- That they would not discriminate against any group or organisation (with protected characteristics) that wished to use the community facilities to be provided at the St Anne's site.
- That they would operate an equalities policy that would be satisfactory to the Council and ensure that the services it provides would be to the wider Lewes community and not restricted to the community of Subud members.

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• <sup>1</sup> The Equality Act 2010 defines 'protected characteristics' as: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

- That the anomalies between the historical talks and writings of Bapak and the current practices of the organisation had initiated an internal debate which had resulted in series of actions within Subud, including the removal of much of the offending material from the Internet.

### ***Mistaken clause inclusion***

40. The bid application form used in the process derived from a generic form developed by Localities (an organisation that specialises in community asset transfers) for use by a number of organisations. During the process it was discovered that the form contained a clause whose purpose was ambiguous and which appeared to be unlawful. It had clearly therefore been included in error and stated:

*“The questionnaire applies to requests for the purchase of a Council asset by voluntary, community or not for profit organisations, unless the organisation is promoting political or religious activities. It is not intended to be used for commercial organisations.”*

41. Once the error had been discovered, the Council halted the sale process and began an internal assessment as to its impact on the bidding process including whether the process needed to start again. At this stage, the Council’s Equalities Manager was consulted for advice. The assessment concluded that the inclusion of the clause:

- was contrary to the Equality Act 2010;
- had resulted partly from the adaption of a template provided by the voluntary and community support organisation, Localities;
- had not been included in the published advertisement for bidders; and
- had not deterred any bidder from applying or pursuing their bid.

42. As a result, it was decided that the bidding process could resume although bidders were to be given the option to amend their bids in the light of this change.

43. The Review Board concluded:

- The duties of the Council in regards to the Equality Act 2010 include a duty to eliminate discrimination by fostering good relations between people who share relevant protected characteristics and those who do not.
- The law makes a distinction between the internal workings of a religious organisation (or charity), including its responsibilities and behaviour towards those who join as members, and its outward facing responsibilities towards the wider community through the provision of community facilities or services. As long as an organisation provides community facilities in accordance with equalities legislation and an acceptable equal opportunities policy, it is largely a matter for the organisation to determine its own internal management policies and practices.
- Given this legal distinction, the Scrutiny Board considered that it would be outside its remit to assess Subud as a religious organisation in relation to the organisation’s own membership; the point at issue is Subud’s relationship with outside organisations and individuals that are likely to use the community facilities that are a key part of its bid.
- Any organisation bidding for a community asset should be expected to have in place an equal opportunities policy in respect of the services or community facilities it intends to provide, or have a firm commitment to developing one.
- No evidence was submitted, despite critical questioning, that Subud has discriminated against non-Subud members in respect of the facilities it has historically provided to the wider Lewes community. There was no evidence that either Subud or any associated organisation would provide community facilities in a discriminatory way in future.

- Subud has publicly undertaken to abide by the Equality Act 2010 and to adopt and implement an equal opportunities policy that is acceptable to the Council.
- The County Council did not breach the Equality Act 2010 by contracting with Subud.
- The erroneous inclusion of a misleading clause in the bid application form did not materially affect the bidding process or the outcome. However, the error may have been avoided had timely advice been sought from the County Council's Equalities Officer.
- All officers involved in future community asset transfers, or developing policies or amendments to policies around them, would benefit from a clear understanding of the Council's duties under the Equality Act 2010.

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## Recommendation

### 3. The County Council should ensure that in respect of future community asset transfers:

**a) Any winning bidder should be required to provide, and demonstrate a commitment to, an equal opportunities policy that is comparable with the County Council's equal opportunities policy in respect of the services or community facilities it intends to provide. If none is in place at the outset, then the organisation must demonstrate a firm commitment to working closely with the Council to develop one.**

**b) The Council must be satisfied that the equal opportunities commitment of a bidder would be respected before the asset transfer can be approved.**

**c) All officers involved in community asset transfers must ensure they are fully aware of the requirements of the Equality Act 2010 as they apply to the County Council and bidders, and that they seek the advice of the Policy Manager (Equalities) as appropriate as part of the process.**

### d) How each bidder was assessed

44. The composition of the Bid Assessment Panel is outlined in the next section. The Panel assessed the three bids in order to recommend a preferred bidder to the Lead Member for Resources who made the final decision. The St Anne's Steering Group nominated two members to sit on the panel.

45. The bids were scored under five criteria with different weightings (percentages) applied to the scores:

- **The organisation (10%)** – the bidder's key aims; its involvement in the community; and how it will provide quality assurance;
- **Finance (30%)** – the bidder's funding and financial history; its bank balance; and its future financial and business projections.
- **Asset transfer rationale (30%)** – the bidder's intended use of the site; the feasibility of the bid; practicalities such as planning permissions; and the stated benefits to the community;
- **Relationship with tenant (10%)** – the bidder's relationship with the tenant of the site, 3VA.
- **Offer (20%)** – a judgement about the feasibility of the bid and not just the price being offered.

46. On 17 June 2013, the Panel met to make their decision. Each panel member scored the bidders without conferring, but they were able to seek additional clarifications from the lead officer. The outcome was that Subud unanimously received the highest score across each criteria.

47. The criteria “relationship with tenant” (3VA) was considered relevant as 3VA was expected to remain closely involved throughout the transfer process. The assessment of the nature of a bidder’s relationship with 3VA was seen as a measure of assurance on continuity in the handover arrangements as well as an indication of positive shared principles. 3VA later gave up its tenancy of the site and so the relevance of this criterion diminished.

48. The Board concluded:

- The bid assessment process was robust and appropriate.
- The winning bidder gained the highest scores consistently on each of the assessment criteria by all the assessors.
- The criteria for future similar assessments could be enhanced by:
  - Reducing the weighting of the criteria: “relationship with 3VA” or equivalent due to the lack of clarity about its relevance to the long term use of the site.
  - Including an additional specific criterion for project “achievability” or “feasibility”.
- Had these enhancements been in place in respect of St Anne’s the outcome would have been the same.

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## Recommendations

**4. The bid assessment form in respect of future community asset transfers should contain an additional category of ‘achievability’ or ‘feasibility’.**

### e) The composition of the Bid Assessment Panel

49. The Bid Assessment Panel comprised:

- four Council officers
  - Asset Investment Manager;
  - Third Sector Policy Manager;
  - Assistant Director for Economy;
  - Principal Finance Officer;
- a 3VA representative who was also a member of the St Anne’s Steering Group (and did not score the bidders against the ‘relationship with tenant’ category);
- a St. Anne’s Steering Group representative (unanimously selected by the Group).

50. The Board concluded:

- The Bid Assessment Panel comprised members from all of the relevant backgrounds for it to arrive at a reasoned and professional judgement.
- There was no perceived bias and the panel members discharged their duty through a robust and disinterested process.

## f) The reasons for disposal to an 'under-bidder'

51. On 29 October 2013, the Lead Member for Resources agreed with the recommendation of the Bid Assessment Panel and made the decision to dispose of the St. Anne's Site to Subud. In terms of monetary value, Subud's bid was not the highest or the lowest of the three bidders. Therefore, the term "under bidder" technically applies to Subud's bid, although the Council did not refer to Subud as an 'under bidder' during the disposal process. The evidence indicates that the 'best value' criterion went considerably wider than the monetary value of any of the bids.

52. The Council may, under the General Disposals Consent 2003, dispose of land or buildings at less than market value provided that the disposal is likely to contribute to the economic, social or environmental well-being of the area and the difference between the market value and the actual price paid is less than £2m. The Council is also expected to be transparent about the disposal of an asset at less than market value. The Council recommended that the Lead Member for Resources approve of the disposal "at an undervalue to the preferred bidder, Subud".

53. The evidence indicates that the Bid Assessment Panel selected the bid that they considered would provide the most advantageous community asset and in doing so took into account a range of relevant factors in addition to the monetary value of the bidders' offers.

54. The Board also considered whether the Council was justified in disposing of the site under the community asset transfer scheme rather than pursuing a conventional sale to achieve the best possible consideration for the County Council.

55. The evidence suggests that, because of the features and access limitations of the site, the value for residential purposes would not be significantly greater than that for community purposes. All factors considered, community use was therefore a rational and acceptable choice for this site.

56. The Review Board concluded:

- The Council was justified in marketing the site for community use considering the relative unsuitability for alternative commercial uses and the strong community support for such an approach.
- Whilst the Council disposed of the site to a bid of lesser monetary value than might have been achieved, it has achieved best value in the transaction.
- "Best value bidder" is preferable to "under bidder" in the context of describing the outcome of the transaction.

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## Recommendation

**5. In the context of future community asset transfers, the Council should aim to make it clear that its assessment of 'best value' is not confined to, and may, within limits, even disregard the notion of achieving maximum price.**

## g) The level of community benefit arising from the successful bidder

57. The sales particulars used to publicise the disposal of the St. Anne's site highlighted that it was intended for community use. The Council deliberately did not prescribe what it envisaged by the term "community use" in order to maximise the likelihood of bidders coming forward with innovative and creative ideas.

58. Subud's bid document, and the subsequent public statements, clarified that there were wider community uses intended for the site including:

- two community halls available for public use;
- a social enterprise hub;
- a crèche;
- a community café (which will use produce grown at the site);
- public gardens;
- possible future additions to the site such as:
  - a facility for Living Well Dying Well (end of life care provider);
  - a lodge offering overnight accommodation.

59. The evidence from Subud's management of its Station Road, Lewes building suggests that:

- the venue is used by the local community 80% of the time and by Subud 20%;
- the facility is in heavy demand and is well used by the wider community;
- room rental is charged at affordable rates;
- facility bookings are on a first come first served basis.

60. Subud stated its intention to operate a similar arrangement at the St Anne's site, but with larger spaces, that would replace its Station Road premises.

61. The Review Board concluded:

- Subud's intended use of the site is likely to provide a facility satisfactorily geared towards the wider local community (in approximately the same ratio as operates at the Station Road, Lewes building) and not just the community of Subud members.

#### **h) How the Council will protect community benefits, equality of access and guard against gains from future housing development.**

62. The Community Asset Transfer policy requires assets such as the St Anne's site to be disposed of using a lease rather than a freehold sale except in special circumstances. No evidence of any special circumstances has emerged and therefore the decision to lease is in line with the policy and is welcomed. A leasehold agreement will make it easier for the Council to ensure that commitments, such as the provision of community benefits and equality of access, are carried out.

63. The lease, and its associated legal agreement and heads of terms, will effectively provide protection against any attempt to change the use of the site, for example to housing. If at any future stage the site were to be developed for housing, the Council should expect a fair share of proceeds.

64. The Review Board concluded:

- The decision to lease the site, as opposed to selling the freehold, is in line with the Community Asset Transfer policy and is appropriate in this case.
- The Council needs to take active steps to reassure the wider local community that there will be adequate monitoring of the terms of the transfer to ensure that all the stated wider community benefits are realised.
- The Council should offer to work with Subud to assist them to develop the necessary community engagement and equalities plans to ensure a successful operation.

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## Recommendations

**6. The Council should offer advice and support (for example by the Council's Head of Communications and Third Sector Policy Officer) to assist Subud with the development of an effective community engagement and equalities strategy.**

**7. Any non-confidential elements within a community asset transfer lease should be made public, in particular: the extent of any requirement for continued use by the general public and how the Council intends to monitor and enforce the key terms of the lease relating to community use.**

**8. Subud should be asked to provide the Council and public with information at regular intervals about the general community use of the St Anne's site.**

## Conclusion

65. Community asset transfers are a relatively new venture for the County Council deriving from the Localism Act 2011, which permits the Council to declare its property to be "land of community value" that can be sold to community organisations at less than market value for the benefit of the community organisation and the wider local community.

66. The disposal of the St Anne's site is the first such transfer for East Sussex County Council under this policy. The process has been very successful in terms of the constructive engagement with the local community and a robust bidding process that has led to a clear outcome with tangible community benefits identified. There was no evidence of any deliberate attempt to mislead the public or the bidders and equalities factors have been properly addressed.

67. Given the complexity of the process, and the inevitability that there will never be 100% community support for any particular solution, there are learning points for the County Council to bear in mind when managing future asset transfers.

68. This scrutiny review has made recommendations that are intended to enable future transfers to run more smoothly. In particular we would highlight recommendations 2a and 2b suggesting that informal discussions with bidders are managed and recorded more carefully and that advice that emerges from conversations with one bidder is made available to the others.

69. In response to the significant public interest, the Review Board held as much of the evidence gathering in public and the Review Board as it could. It has published as much of the written evidence as possible that was not restricted by commercial sensitivity or confidentiality.

70. The Review Board would like to thank all those who took the time to provide written evidence and who appeared to give oral evidence at the meetings. The Board would also like to thank the officers who supported the review including Harvey Winder and Paul Dean.

# Appendix

## Scope and terms of reference

To undertake an analysis of the process that led to the choice of preferred bidder in respect of the disposal of the St Anne's School site, and to hear the public concerns. The issues include:

- The extent to which the St Anne's Steering Group was representative of the community
- Advice given to each bidder
- The extent of the Council's research into the policies (particularly equal opportunity policies) of the bidders
- How each bidder was assessed/scored
- The composition of the Bid Assessment Panel
- The reasons for disposal to an 'under-bidder'
- The level of community benefit arising from the successful bidder
- How the Council will protect community benefits and equality of access to the site's facilities
- How protection against gains from future housing development on the site is to be achieved.

The Board will report its findings and any appropriate recommendations to the Lead Member for Resources.

## Review Board Members

**Councillors John Barnes, Jeremy Birch and David Tutt** - substituting for Cllr Blanch (Chair)

*Support to the Board was provided by the following East Sussex County Council officers:*

Kevin Foster, Chief Operating Officer

Chris Reed, Asset Investment Manager and Bid Assessment Panel member

Paul Rideout, Third Sector Policy Manager and Bid Assessment Panel member

Sarah Feather, Policy Manager (Equalities)

Rachel Doran, Solicitor

Rebekah Herring, Solicitor

## Witnesses

**Kevin Foster** Chief Operating Officer, East Sussex County Council (ESCC)

**Chris Reed** Asset Investment Manager, ESCC and Bid Assessment Panel member

**Paul Rideout** Third Sector Policy Manager, ESCC and Bid Assessment Panel member

**Sarah Feather** Policy Manager (Equalities), ESCC

**Cllr Ruth O'Keeffe** Member of St. Anne's Steering Group; elected member for Lewes Division, ESCC; elected member of Lewes Town Council and Lewes District Council.

**Cllr Rosalyn St. Pierre** Elected member for Ringmer and Lewes Bridge Division, ESCC.

**Tony Leonard** Local business owner.

**Stephanie Davies-Arai** Local resident and former member of Subud Lewes Group.

**John Stockdale** Member of the St. Anne's Group; former trustee of the Lewes Community Land Trust (LCLT); and elected member of Lewes Town Council and Lewes District Council.

**Cllr Susan Murray** Member of St. Anne's Steering Group and Lewes Town Council

**David Anderson** Member of Subud Lewes Group; member of the Subud St. Anne's Project Team; director of Pelham House; and trustee of the Living Well, Dying Well organisation.

**Annabella Ashby** Chair of Subud Lewes Group.

### ***Review Board meeting dates***

#### **23 September 2014**

- Adopted the terms of reference of the review.
- Agreed the process and questions to be answered during the course of the review.

#### **15 October 2014 (in public)**

- Considered written evidence pack A and 'exempt' evidence pack 1
- Heard oral evidence from and questioned:
  - John Stockdale (on behalf of the St. Anne's Group)
  - Tony Leonard
  - Stephanie Davies-Arai
  - David Anderson and Annabella Ashby (on behalf of Subud)
  - Cllr Susan Murray

#### **21 October 2014 (in public)**

- Heard oral evidence from and questioned:
  - Cllr Ruth O'Keeffe
  - Cllr Rosalyn St. Pierre
  - East Sussex County Council (Kevin Foster, Chris Reed, Sarah Feather and Paul Rideout).

#### **14 November 2014 (in public)**

- Assessed evidence and agreed that sufficient evidence had been collected.

#### **14 November – 7 January 2015**

- Deliberating and drafting report.

## List of evidence documentation (published)

Item No.	Item	Pack ref.
1	<p><b>Summary of the disposal process (ESCC Business Services Department)</b></p> <ul style="list-style-type: none"> <li>Outline description of the whole process concerning the disposal of the St. Anne's school site as a community asset.</li> </ul>	A
2	<p><b>Statement by ex-Head of Estates and Asset Management, ESCC</b></p> <ul style="list-style-type: none"> <li>Statement to Lewes County Court as part of the application to evict the illegal occupiers of the St. Anne's site (May 2011).</li> </ul>	A
3	<p><b>St. Anne's Steering Group: Terms of Reference (summary)</b></p> <ul style="list-style-type: none"> <li>Specifies the Group's purpose, membership, operation and proceedings. (October 2011).</li> </ul>	A
4	<p><b>Tree Preservation Order Notice</b></p> <ul style="list-style-type: none"> <li>Issued by Lewes District Council on 7 May 2004 in respect of several trees on the St. Anne's site.</li> </ul>	A
5	<p><b>Report to the ESCC Lead Member for Resources (23 October 2012)</b></p> <ul style="list-style-type: none"> <li>The report that supports the decision by the Lead Member for Resources to declare the St Anne' school surplus to the Council's requirements and to authorise marketing for community use.</li> </ul>	A
6	<p><b>Community Asset Transfer Policy</b></p> <ul style="list-style-type: none"> <li>The Council's policy for disposing of assets for the purpose of community use. (May 2013).</li> </ul>	A
7	<p><b>Public notice of sale of former St. Anne's School for community uses</b></p> <ul style="list-style-type: none"> <li>Public notice advertising the sale of the St Anne's site. (16 January 2013).</li> </ul>	A
8	<p><b>Sales Particulars for the former St. Anne's School</b></p> <ul style="list-style-type: none"> <li>Detailed description of the St Anne's school site inviting expressions of interest, particularly from local community groups, the voluntary sector and other users seeking to create an asset for the community. (16 January 2013)</li> </ul>	A
9	<p><b>ESCC Asset Transfer Bid application (blank) form</b></p> <ul style="list-style-type: none"> <li>The community asset transfer application form, including questionnaire, used by the Council to assess bidders' applications.</li> </ul>	A
10	<p><b>Bid Scoring 'matrix' template (blank)</b></p> <ul style="list-style-type: none"> <li>The bid scoring matrix template used by the Bid Assessment Panel to 'score' the bidders against a number of criteria.</li> </ul>	A
11	<p><b>Report to ESCC Lead Member for Resources (29 October 2013)</b></p> <ul style="list-style-type: none"> <li>The report that supports the decision by the Lead Member to approve the disposal of the St. Anne's school site to Subud, and to delegate authority to negotiate the terms for the sale of the site.</li> </ul>	A

Item No.	Item	Pack ref.
12	<p><b>Subud Lewes Group (submission 1)</b></p> <ul style="list-style-type: none"> <li>• A statement to the Scrutiny Review Board</li> <li>• Letters of support from multiple Subud groups</li> <li>• Pelham House Human Rights Policy, Equal Opportunities and Diversity Policy,</li> <li>• A list of events held in Pelham House.</li> </ul>	A
13	<p><b>Joint letter from YMCA and LCLT</b></p> <ul style="list-style-type: none"> <li>• A joint letter to the County Council's Chief Executive and Leader raising a formal objection to the procurement process. (Undated but believed to be August 2013 )</li> </ul>	A
14	<p><b>Submissions from members of the public and other parties (personal data redacted)</b></p> <ul style="list-style-type: none"> <li>• 45 emails sent to Cllr Ruth O'Keeffe (44 were supportive of the decision)</li> <li>• Submission from: Cllr Susan Murray.</li> <li>• 8 emails sent directly to the Review Board. Includes submissions from: <ul style="list-style-type: none"> <li>○ Stephanie Davies-Arai</li> <li>○ St. Anne's Group</li> </ul> </li> </ul>	A
15	<p><b>Submission from Tony Leonard (submission 1)</b></p> <ul style="list-style-type: none"> <li>• Summary of arguments alleging that Subud "was an organisation with sexist, homophobic doctrines and policies at the time the bid was awarded". Citing a range of supporting documents: <ul style="list-style-type: none"> <li>○ Letter to ESCC Chief Executive from Tony Leonard &amp; Dominic McCartan (1 September 2014) / Reply (9 September 2014)</li> <li>○ Historical Subud publications: <i>Advice &amp; Guidance for Helpers</i> (1988) / Extract from <i>Subud Survival Guide</i> (May 2010)</li> <li>○ Article by Annabella Ashby, Chair of Subud Lewes Group in <i>Subud Voice</i> (October 2014)</li> <li>○ Letter to all Subud members from 'Stefan', Coordinator, World Subud Association (January 2009)</li> <li>○ Article by Lilliana Gibbs (June 2007)</li> <li>○ "Lewes Subud Responds to Open Letter Anti-Gay Allegations", <i>The Gay UK</i> (19 September 2014)</li> </ul> </li> </ul>	A
16	<p><b>Bid Assessment Panel members</b></p> <ul style="list-style-type: none"> <li>• List of Bid Assessment Panel members and organisation represented.</li> </ul>	B
17	<p><b>St. Anne's Steering Group miscellaneous papers</b></p> <ul style="list-style-type: none"> <li>• Membership and attendance record (amended 12 November 2014 to include details of meeting facilitated by ESCC with the Steering Group).</li> </ul>	B

Item No.	Item	Pack ref.
	<ul style="list-style-type: none"> <li>• 'Guidance book' including processes &amp; terms of reference</li> <li>• Minutes of St. Anne's Steering Group meetings.</li> </ul>	
18	<p><b>Lewes Community Land Trust (LCLT)</b></p> <ul style="list-style-type: none"> <li>• Email correspondence between Council Estates Surveyor and Chair of LCLT (dated between 26 and 28 February 2013)</li> <li>• Letter of objection (15 July 2013)</li> <li>• Email to bidders from Principal Estates Surveyor announcing review of process (23 July 2013)</li> <li>• Response from ESCC Chief Operating Officer to joint letter from YMCA and LCLT (see 13 above) (11 October 2013)</li> </ul>	B
19	<p><b>Subud Lewes Group (submission 2)</b></p> <ul style="list-style-type: none"> <li>• General statement and responses to issues raised.</li> </ul>	B
20	<p><b>Living Well Dying Well</b></p> <ul style="list-style-type: none"> <li>• Response from Director of Living Well Dying Well to specific issues raised (see p.254 of 15/10/2014 evidence pack)</li> </ul>	B
21	<p><b>Miscellaneous written statements on various aspects of the process:</b></p> <ul style="list-style-type: none"> <li>• <b>Cllr Rosalyn St. Pierre</b> <ul style="list-style-type: none"> <li>○ Written copy of oral evidence given to the Review Board on 21 October 2014</li> <li>○ Additional submission about community benefit, equalities and St. Anne's Steering Group (30 October 2014)</li> </ul> </li> <li>• <b>Stephanie Davies-Arai</b> <ul style="list-style-type: none"> <li>○ Personal notes of Scrutiny Review Board meeting of 21 October 2014</li> </ul> </li> <li>• <b>Chair of Lewes Conservation Area Advisory Group</b> <ul style="list-style-type: none"> <li>○ Opinions on the St. Anne's Steering Group and the bidding process (16 October 2014)</li> </ul> </li> <li>• <b>Tony Leonard (submission 2)</b> <ul style="list-style-type: none"> <li>○ Views on local authority equality duties sent to Chief Executive, ESCC (31 October 2014)</li> <li>○ Screenshots of Subud Books (subudbooks.com) website (19 October 2014)</li> <li>○ "Subud Internet Etiquette" by Matthew Weiss, WSC Internet Coordinator (October 2014).</li> </ul> </li> </ul>	B
22	<p><b>Public response to a Freedom Of Information (FOI) request ref: 2940</b></p> <ul style="list-style-type: none"> <li>• Officer email correspondence about the community asset transfer bids for St. Anne's School.</li> </ul>	B

**Pack reference key**

A= [Public agenda pack available for 15 October 2014 Review Board meeting.](#)

B= [Additional documents \(updated on 6 and 12 November 2014\)](#)

## List of 'exempt' evidence documentation (not published)

	Item	Pack ref.
1	<p><b>St. Anne's Steering Group members' comments (18 June 2013)</b></p> <ul style="list-style-type: none"> <li>St. Anne's Steering Group members' comments from an ESCC-facilitated meeting. The meeting was set up to provide the Steering Group Members with details about all the bids and to outline the Bid Assessment Panel's rationale for recommending Subud. (The Bid Assessment Panel had met and reached its decision the day before, 17 June 2013).</li> </ul>	1
2	<p><b>Confidential bid scoring sheet<sup>2</sup></b></p> <ul style="list-style-type: none"> <li>The bid scores awarded by each member of the Bid Assessment Panel to the three bidders</li> </ul>	1
3	<p><b>Assessment summary from Bid Assessment Panel</b></p> <ul style="list-style-type: none"> <li>A summary of the assessment of the bids across each of the five bid assessment criteria.</li> </ul>	1
4	<p><b>Heads of Terms</b></p> <ul style="list-style-type: none"> <li>A draft of the Heads of Terms between ESCC and Subud for the sale of the St. Anne's school site.</li> </ul>	1
5	<p><b>Letter from Living Well Dying Well (submitted in confidence)</b></p> <ul style="list-style-type: none"> <li>A letter of support to the Lewes Subud Group project submitted in confidence to the Review Board by Hermione Elliott (1 October 2014).</li> </ul>	1
6	<b>Lewes Community Land Trust (LCLT) – first bid</b>	2
7	<b>Lewes Community Land Trust (LCLT) – second (revised) bid</b>	2
8	<b>Subud bid</b>	2
9	<b>YMCA bid</b>	2
10	<b>Living Well Dying Well: Articles of Association</b>	2
11	<p><b>Notes of meetings between Lewes Community Land Trust and ESCC (dated January – March 2013)</b></p> <ul style="list-style-type: none"> <li>Personal notes made by the Chair of the LCLT during three meetings with an ESCC Estates Surveyor.</li> </ul>	3

<sup>2</sup> The Board considered that there were some public interest arguments for publishing the scoring sheet (particularly as the scores for Subud were decisively higher than the scores for the other two bidders), but on balance agreed that there were grounds (commercial sensitivity) for the document to remain exempt for the time being; additionally, two of the bidders have requested that the document remains exempt.

<b>12</b>	<p><b>Complaint (submitted in confidence)</b></p> <ul style="list-style-type: none"> <li>• A formal complaint about the process of the disposal of the St. Anne's site by a member of the public.</li> </ul>	<b>4</b>
<b>13</b>	<p><b>YMCA email (submitted in confidence) and response from officers</b></p> <ul style="list-style-type: none"> <li>• An email to the review board from the YMCA raises concerns about the process submitted in confidence. Officer's response to the specific example raised in the email is included.</li> </ul>	<b>4</b>
<b>14</b>	<p><b>Exempt (unredacted) information in relation to FOI request ref: 2940</b></p> <ul style="list-style-type: none"> <li>• Comprises three unredacted emails from the FOI Request ref: 2940.</li> </ul>	<b>4</b>

### **Pack reference Key**

1= Exempt evidence pack for the 15 October 2014 review board.

2= Exempt evidence pack 2 circulated prior to the 21 October 2014 review board.

3= Exempt evidence pack 3 circulated prior to the 21 October 2014 review board.

4= Evidence circulated to the Board following 21 October 2014 review board.

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