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## **MELLTREE PROPERTIES LIMITED – WRITE OFF OF BALANCE OF DEBT**

To: **Cabinet - 14 November 2013**

Main Portfolio Area: **Financial Services**

By: **Financial Services Manager**

Classification: **Unrestricted**

Ward: **All**

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**Summary: To approve the write off of the balance of a debt of £63,750.**

### **For Decision**

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#### **1.0 Introduction**

- 1.1. A European Regional Development Fund (ERDF) grant of £68,750 was paid by the Council to Melltree Properties Limited on 30 November 2007 in respect of the conversion of the property at 42 High Street and 16 Marine Drive, Margate into artist studios/galleries.
- 1.2. The full conversion of the property into a gallery and artist studios did not happen and consequently the Council has been seeking full repayment of the grant from Melltree Properties Limited and from the two directors of the company. The Council had issued legal proceedings against the company and had successfully applied to join in the company directors in a personal capacity. The company then made an offer of £5,000 in full and final settlement.
- 1.3. Counsel advice was sought on whether the Council was likely to be successful if the case proceeded to trial. Counsel's advice was that due to there being conflicting evidence as to whether the grant monies had to be used for the conversion of the property or whether it could be used to repay property acquisition costs, the Council was unlikely to be successful in court. Counsel therefore recommended that the Council accept the offer of settlement rather than commit more expenditure on litigation, only to lose and then have to pay the other side's costs. Accordingly, the litigation was settled on those terms.
- 1.4. It is therefore necessary to write off the balance of the debt, i.e. £63,750, and in this regard the Council's Financial Procedure Rules require all write offs over £20k to be approved by Cabinet. Cabinet is further advised that because the litigation has been settled, the remaining debt is legally irrecoverable. Consequently, proper accounting treatment requires the debt to be written off.

#### **2.0 Background**

- 2.1. Under the ERDF programme, grants were paid to recipients upon evidence of expenditure incurred as set out in the grant approval letters. However, due to a need to spend the ERDF funding to avoid a clawback from the Government

Office of the South East (GOSE), it was agreed with GOSE that the grant to Melltree Properties would be paid up-front. However, the Council's view was that there was still a clear expectation that the grant had to be expended on the permissible purposes i.e. the conversion to a gallery and artist studios. Of the grant monies, a sum of £25k was used to repay property acquisition costs and a further £25k was paid to one of the director's other companies. In the Council's view, the majority of this spend was impermissible and therefore recoverable.

- 2.2. On the basis that the funding had not been used for the purposes for which the grant had been given, the Council subsequently invoiced Melltree Properties Limited for the full repayment of the grant. The Council's legal team then actively pursued this debt and issued proceedings against the company. As Melltree Properties Limited were no longer trading and did not appear to have any assets to repay the debt, the company directors were also joined in the litigation in order that their personal liability could be established.
- 2.3. In turn, the directors argued that the Council had agreed that the grant could be used to defray property acquisition costs and that they could evidence that the full grant had been spent in accordance with the agreement.

### **3.0 Next Steps**

- 3.1. The litigation proceeded to the disclosure of evidence stages whereon the defendants offered a sum of £5k in full and final settlement. Counsels' advice was then sought as to whether to accept or reject the offer.
- 3.2. Although Counsel agreed that the Council's grant offer letter, together with the standard grant conditions, supported the Council's argument that the grant was for a specific purpose and the only condition waived was the payment by results condition, an internal audit report on the grant claim (which had been disclosed to the defendants on the advice of counsel) included a statement from the Council's Project Manager that the grant could in fact be used for property acquisition costs. Counsel therefore advised that the audit report was likely to be used by the Directors' legal advisers against the Council and on this basis, the Council should accept the offer made by the Directors to avoid incurring further litigation costs, To do otherwise would place the Council at risk of losing and to then having to also pay the defendants legal costs.
- 3.3. In order to protect the public purse from further exposure, the Council's Litigation Solicitor, acting on the advice of Counsel settled the claim on the terms offered. The acceptance of the offer resulted in the balance of the debt of £63,750 becoming irrecoverable. As such, it can no longer be treated as a debt and therefore must be written off. As stated above, all write offs over £20k must be approved by Cabinet.

### **4.0 Corporate Implications**

#### **4.1 Financial**

- 4.1.1. This debt has been accounted for in full within the Council's bad debt provision. As the debt is now irrecoverable, proper accounting treatment requires the debt to be written off.

## **4.2. Legal**

4.2.1 The claim against Meltree Properties Limited and its two directors was settled on the terms advised by Counsel. As the balance of the claim in the sum of £63,750 is irrecoverable, the Cabinet is under a duty to write it off.

## **4.3. Corporate**

4.3.1 The Council has since reviewed the procedures and processes for awarding and monitoring external grant and is satisfied that the circumstances that resulted in the full grant being paid over to Melltree Limited in a single instalment in advance of delivery, could no longer occur.

## **4.4 Equity and Equalities**

4.4.1 There are no equity or equalities issues arising from this report.

## **5.0 Recommendation**

5.1. That Cabinet approves the write off of the balance of the debt owed by Melltree Properties Limited in the sum of £63,750.

## **6.0 Decision Making Process**

6.1 Cabinet make decision on such matters where the debt write off is in excess of £20k.

Contact Officer:	Sarah Martin, Financial Services Manager
Reporting to:	Sue McGonigal, Chief Executive

## **Annex List**

N/A	N/A
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## **Background Papers**

<b>Title</b>	<b>Where to Access Document</b>
None	N/A

## **Corporate Consultation Undertaken**

Finance	N/A
Legal	Harvey Patterson, Corporate & Regulatory Services Manager