



**Report for:
ACTION**

Item Number: 6

Contains Confidential or Exempt Information	No
Title	Victoria Hall Trust
Responsible Officer(s)	Adam Whalley Assistant Director Capital Investment Programme Helen Harris (Director of Legal & Democratic Services)
Author(s)	Adam Whalley
Portfolio(s)	N/A
For Consideration By	The Trustee of the Victoria Hall Trust (acting by General Purposes Committee)
Date to be Considered	9 th December 2020
Implementation Date if Not Called In	N/A
Affected Wards	Ealing Broadway
Keywords/Index	Victoria Hall, Princes Hall. Trust, redevelopment, Charity Commission, disposal

This report updates the Trustee of the Victoria Hall Trust on matters relating to the Trust and in particular actions undertaken in relation to the latest response from the Charity Commission, and it seeks decisions necessary to inform the response to the Charity Commission.

1. Recommendations

It is recommended that the Trustee

- 1.1 Agrees to the recommendation of the interview panel to appoint two independent non-voting co-opted members of the General Purposes Committee and further agrees that Ms Dippy Chaudhary and Mr Ian Patterson be appointed to these roles, in relation only to the Committee's function as Trustee of the Victoria Hall Trust.
- 1.2 Notes that a response has now been sent to the Charity Commission following direction given by the Trustee at the meeting of 30 July 2020, (Appendix 1);
- 1.3 Notes the further Valuation report included at Appendix 2 to this report prepared by Sanderson Weatherall acting for the Trust which provides further advice to the Trust on the Trust's assets in response to comments raised by the Charity Commission in its April 2020 review;

- 1.4 Notes the further progress which has been made in revising the terms of the agreement between the Council and Mastcraft, to facilitate and enable the implementation of the changes to the updated Community Use Protocol at Appendix 3 to this report.
- 1.5 Notes that financial accounts are being prepared for the Trust, and that these will be presented to a future meeting of the Trust,

2. Purpose of this Report

2.1 General Purposes Committee continues to exercise the functions of the Council as Trustee of the Victoria Hall Trust. The Committee has now received and considered six reports in its capacity as Trustee and at its last two meetings on 29 June 2020 and 30 July 2020 considered the Decision Review issued by the Charity Commission in April 2020 and discussed the options around a response to this Review as presented by Officers acting on behalf of the Trust.

2.2 Full details of the background to the Mastcraft proposals and details of the proposals themselves have been included in earlier reports and are therefore not repeated here except to confirm that the original reason for the application to the Charity Commission was twofold, namely to update the objects of the Trust, given that the existing objects of the Trust are no longer compliant with modern charity law, and to seek consent for the disposals arising from the Mastcraft proposals.

2.3 The legal context is that the Trusts of Land and Appointment of Trustees Act 1996 provides the Council with the powers of an absolute owner as the sole trustee of the Trust. In principle this includes the power to dispose of Trust property as is envisaged as part of the Mastcraft proposal. However, this is restricted by section 62 of the Charities Act 2011 which sets out the circumstances in which the original purposes of a charity can be altered to allow property to be applied for a different purpose.

2.4 To alter a charity's purpose, the court or the Charity Commission must make what is known as a "cy-près scheme". A cy-près scheme (Scheme) is a legal arrangement that allows charitable property to be applied for charitable purposes which are similar to the original purpose(s).

2.5 In September 2019, following authorisation by the Trustee, a draft Scheme was submitted to the Charity Commission which undertook a review taking into account public representation and other background information and sent its findings to Council officers in April 2020 in the form of a Decision Review.

2.6 The Trustee considered the content of the Charity Commission's Review and comments in its previous two meetings of 29 June 2020 and 30 July 2020 and has carried out a sequential assessment of the Charity Commission's findings and recommendations supported by a report provided by Officers acting on the Trust's behalf. This report provides the Trustee with an update on progress which has been made since the previous meetings of the Trust.

2.7 Following the authorisation given by the Trustee at the meeting of 30 July 2022, a response to the Charity Commission has now been submitted and is awaiting a response. A copy of the submission to the Charity Commission attached at Appendix 1.

2.8 A further valuation report has been prepared by Sanderson Weatherall acting on behalf of the Trust and is included at Appendix 2 to this report. In summary this finds the market value of the Trust's assets to be as follows:

Victoria Hall	£1,050,000
Princes Hall	£635,000

2.9 The valuation report finds the market value of the Queens Hall (which is proposed to be swapped with the Princes Hall) to be £570,000. The valuer's report however also notes that when regarded in the context of the wider transaction, the Trust would be set to gain financially with the £65,000 difference in Market Value being significantly offset by: the receipt of a share of rent and premium payments, the ability to relinquish repair and maintenance obligations for Victoria Hall and substitute accommodation. The report concludes that the valuer considers the proposed transaction to be within the financial and operational interests of the Trust and the terms proposed are the best that can reasonably be obtained by the Trust. The valuation report has been submitted to the Charity Commission as part of the Trust's response to the Decision Review.

2.10 Further to the Trust's authorising a recruitment process to appoint a non-voting independent co-optee to the Trust, an advertisement was published online and was also included in Around Ealing in September inviting members of the public to apply for the role. Based on an assessment of applications received, a recruitment panel which included the Chair of the Trust shortlisted and interviewed candidates for the role. The Panel recommended that the Trust appoint two independent co-opted Trustees – Ms Dippy Chaudhary and Mr Ian Patterson. Because the Trust only authorised the appointment of one person to the role, it is now necessary for the Trust to consider whether it will be appropriate to appoint two people. The Panel considered that appointment of two excellent candidates will strengthen the Trust.

2.11 In addition, amendments to the Community Use Protocol have now been made and a revised draft Protocol has been included at Appendix 4 to this report. Although agreed in principle with Mastcraft, these changes remain subject to the formal agreement between the Council and Mastcraft by way of a revision to an agreement for lease which was completed between the Council and Mastcraft, with the approval of the Trustees, on 5th November 2019. This included the Community Use Protocol which will form part of the eventual lease.

3. Legal Considerations

3.1 Members of General Purposes Committee are making decisions as Trustee of the Victoria Hall Trust/ charity and are therefore bound by charity law

to act in the best interests of the charity and its beneficiaries both generally and with regard to the particular decisions it makes under this report. In making the decisions, the Trustee should have due regard to relevant guidance and advice issued by the Charity Commission but not limited to, the Commission guidance on the [roles and responsibilities of trustees \(CC3\)](#), [guidance on local authorities acting as trustees](#), [guidance on changing the charity's objects](#), [guidance on the disposal of charitable property \(CC28\)](#) and [guidance on identifying and managing conflicts of interest \(CC29\)](#).

3.2 When considering the proposals which are put forward by the Council regarding Ealing Town Hall, as well as other available options, the Trustee is under a duty to consider the duties set out in the following paragraphs.

Duty to carry out its purpose for the public benefit

3.3 The Trustee is aware that the current status quo regarding the maintenance of the charity's property by the Council using public funds cannot continue due to the financial restraints placed on the Council. The Trustee is legally required therefore to find an alternative solution in order to protect the assets of the Trust and ensure that the public continue to benefit from the charity.

3.4 Advice has been obtained from an experienced charity law barrister on the governing document(s) of the charity who confirmed that charitable objects of the charity were vague and imperfect. There was a risk that the objects may not give effect to the wishes and intentions of the original subscribers to the charity and the purpose for which the charity was established. The barrister advised that the Council apply to the Charity Commission for a Scheme to update the charitable objects of the charity to more accurately reflect the original purposes for which the charity was established. The Charity Commission has drafted a proposed Scheme to apply new charitable objects via cy-près and the Council is asked to consider these proposed objects to ensure that the charitable purpose of the charity is maintained. A 'cy-près' Scheme is one which is as near as possible to the original trustee's intentions when these cannot be precisely followed. The Scheme, when published by the Charity Commission, would cover the disposal and change of charitable objects.

Compliance with the charity's governing document and the law

3.5 As stated above, expert external legal advice was obtained on the governing document of the charity and its potentially imperfect charitable objects. On the basis of that advice, and in order to comply with its legal duties, the Council applied for a cy-près Scheme from the Charity Commission, to apply new charitable objects in line with the original purposes for which the charity was established. In response to that application, the Charity Commission has now asked that the Trust provide further information and clarification, as set out in the Charity Commission's April review document (Appendix 1).

Manage your charity's resources responsibly

3.6 The Trustee, as sole charity trustee, is required to manage the assets of the charity in a reasonably prudent manner and to protect them for the benefit of the beneficiaries of the charity. The Trustee is aware that the Council has made clear that the current arrangement regarding the ongoing maintenance of the Trust Property being significantly subsidised by Council funds cannot continue. The Trustee is therefore also aware that removal of that subsidy will leave a shortfall in the income of the charity. In turn, this could lead to the Trust Property becoming dilapidated. The Trustee may therefore consider that, in contrast with other options, the assets of the charity can be best protected through entering into the lease arrangements with Mastcraft, through which the charity's assets will be maintained and protected long-term whilst still being available to the beneficiaries of the charity to use in accordance with the charity's charitable objects.

Ensure the charity is accountable

3.7 The Trustee approved the approach for the accounts for the Trust, at its meeting of [16th April 2019](#). The Council has admitted to historic failings in this area but is now committed to clear and open accountability for the Trust. A further report will be brought back to the Trustee as soon as possible, with an update on the accounts position.

Conflict of Interest

3.8 There is potential for a conflict of interest (or perception thereof) regarding the Council's dual role as a local authority and trustee of the Trust, and this has already been recognised by both the Council and Trustee. The Council has therefore sought, obtained, and followed both independent legal advice and guidance from the Charity Commission throughout this process and will continue to do so. The Trustee should, as always in considering this report, reach an independent judgement as Trustee, and consider and decide whether it feels it has received sufficiently independent advice necessary to inform its decision-making.

Appendices

Appendix 1 – Letter to the Charity Commission

Appendix 2 – Revised Sanderson Weatherall valuation report

Appendix 3 – Revised Community Use Protocol

Background Information

Full [Council report 19 December 2017](#)

General Purposes Committee reports – [15 March 2018](#), [15 January 2019](#), [16 April 2019](#), [26 September 2019](#), [29 June 2020](#) and [30 July 2020](#)

Cabinet reports [21 October 2014](#), [12 July 2016](#) and [12 February 2019](#)

Charity Commission Guidance including [CC3](#), [CC28](#) and [CC29](#)

<https://www.gov.uk/government/organisations/charity-commission/about/publication-scheme>

Report History

Decision type: N/A	Urgency item? No
Report no.:	Author: Adam Whalley