



**Report for:**  
**ACTION**

**Item Number:**

<b>Contains Confidential or Exempt Information</b>	No
<b>Title</b>	Victoria Hall Trust
<b>Responsible Officer(s)</b>	Adam Whalley Assistant Director Capital Investment Programme Helen Harris (Director of Legal & Democratic Services)
<b>Author(s)</b>	Adam Whalley
<b>Portfolio(s)</b>	N/A
<b>For Consideration By</b>	The Trustee of the Victoria Hall Trust (acting by General Purposes Committee)
<b>Date to be Considered</b>	29 <sup>th</sup> June 2020
<b>Implementation Date if Not Called In</b>	N/A
<b>Affected Wards</b>	Ealing Broadway
<b>Keywords/Index</b>	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 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 Notes the Charity Commission’s review of the decision to make a Scheme for the regulation of the Trust, attached at Appendix 1
- 1.2 Considers and makes decisions on the points and options set out in Appendix 4, to inform the response to the Charity Commission
- 1.3 Considers whether to hold a further meeting, to give more detailed direction, prior to that response being sent
- 1.4 Authorises the Assistant Director Capital Investment Programme, acting for the Trustee, to take the steps decided by the Trustee and to reply to the Charity Commission’s review on behalf of the Trustee, following consultation on the draft response with the Chair of the Trustee body and the Director of Legal and Democratic Services

## 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 four reports in its capacity as Trustee and at its last meeting on 26 September 2019 considered a comprehensive report intended to enable a final decision to be made by the Trustee about the proposal for the Trust property and in order to assist the Charity Commission in reviewing the resulting applications.

2.2 Full details of the background to the proposals and details of the proposals themselves were set out in that report 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 When making a Scheme, the Commission can provide for Trust Property to be applied for such charitable purposes as it considers appropriate, but it must have regard to the matters set out in subsection 67(3) of the 2011 Act. These are:

- (a) the spirit of the original gift;
- (b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes; and
- (c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

2.6 Following consideration of the September 2019 report General Purposed Committee as sole Trustee resolved that (subject to necessary consents) it still wished to proceed with the Mastcraft scheme and authorised officers of the Council, acting on the Trust's behalf, to conclude the necessary legal steps, including

- (i) the Agreement for Lease to be entered into (between the Council, Mastcraft, and the Trust),
- (ii) final detailed settlement of the Community Use covenant, and

(iii) a further application to and associated dealings with the Charity Commission necessary to progress the Scheme on that basis.

2.7 In addition, officers of the Council were also authorised to settle the apportionment of the lease premium and rent paid by Mastcraft (as well as the fair and reasonable contribution to be made by the Trust towards the Council's costs), in accordance with the advice received from the independent valuer attached to the September report (and any further valuation advice required in that respect).

2.8 Following the meeting on 26 September 2019 the minutes were sent to the Charity Commission who confirmed that they were satisfied that

a. The decision of the Committee appeared to have complied with the Trustee's decision-making responsibilities, and that the mechanism of the Committee making the decision sufficiently addresses the Council's conflict of interest in making a trustee decision (given its other interests in the Mastcraft proposal).

b. A cy-près occasion has arisen, and therefore a Scheme can be made that would (amongst other things) permit the Trustee to enter into a lease as a (new) mechanism for the continued operation of the Trust Property for its existing purposes.

c. Once they had agreed the draft Scheme, they were likely to require the draft be published for 30 calendar days.

2.9 The wording of a draft Scheme was subsequently finalised by the Charity Commission in November 2019 and was published with closing date of 7 January 2020 (see Appendix 2).

2.10 The representations made in response to the draft Scheme included a petition signed by 1,400 people and a detailed 41-page document prepared by the Friends of Victoria Hall.

2.11 The Charity Commission then reviewed the draft Scheme taking the responses and other background information into account and sent its findings to Council officers in April 2020 (see Appendix 1). Although there are many factors to be given attention, the thrust of the Charity Commission response is that further consideration needs to be given to the following in particular:

- a. The extent of the charity's property
- b. The needs of the public in Ealing
- c. The use of the premium
- d. The Charity's future use of the Victoria Hall
- e. Managing conflicts of interest.

2.12 The Charity Commission's findings are set out in table form in Appendix 4. In summary the Charity Commission consider that

- a. The existing primary object of the Trust is to 'provide facilities for recreational and other leisure-time occupation by members of the public in Ealing and its neighbourhood in the interest of social welfare'.
- b. Despite representations to the contrary by those opposed to the Mastcraft proposals, the preservation of the Trust property itself (i.e. the Victoria and Princes Halls) is not integral to the purpose of the Charity.
- c. The circumstances provided for in the Charities Act 2011 exist and that they therefore continue to agree in principle that a Scheme can be made to authorise the disposal of the Victoria and Prince's Halls.

2.13 However, the Charity Commission also confirmed that a Scheme can only be made if the property realised by the Trust as part of the overall transaction with Mastcraft can be applied for charitable purposes 'that are more suitable and effective than the original purposes'. By "property realised", the Charity Commission mean the Town Hall as it will be developed and then regulated by way of the lease to Mastcraft. In this context, and as referred to by the Charity Commission, regard must be had to matters set out in subsection 67(3) of the 2011 Act referred to above namely

- (a) **the spirit of the original gift** - the Charity Commission are of the view that this is 'the provision of facilities for recreation and other leisure time occupation in the interest of social welfare for the public of Ealing and its neighbourhood';
- (b) **the desirability of securing that the property is applied for charitable purposes which are close to the original purposes** which the Charity Commission consider to be facilities in Ealing i.e. not necessarily the Victoria Hall or Prince's Hall;
- (c) **the need for the Trust to have purposes which are suitable and effective in the light of current social and economic circumstances.** The Charity Commission consider a number of factors to be relevant to this aspect including demand in the area for recreational/leisure time facilities, modern requirements for facilities, whether the Town Hall building adequately meets current needs and whether there are individuals or groups needing facilities which would not be met by the refurbished halls.

2.14 Given that the Charity Commission agree that a Scheme is appropriate, they have then considered whether the changes facilitated by the Scheme as currently drafted will provide 'a more suitable and effective method of using the property'.

2.15 Factors that the Charity Commission acknowledge make the use of Trust Property following the making of the proposed Scheme more suitable and effective as are follows: -

- (a) The Trust is relieved of the financial burden of the upkeep and maintenance of the Victoria Hall as this will in future be the responsibility

of Mastcraft who will also be under a duty to renew and replace fixtures and fittings as necessary.

- (b) The Victoria Hall will be renovated at the expense of Mastcraft.
- (c) The Trust will still have access to the refurbished Victoria Hall for use by qualifying community groups at preferential rates on (potentially) 355 days a year.
- (d) A working group will be established, which may co-opt members from the community, to monitor and review the use of the Victoria Hall in accordance with the Scheme.
- (e) The Trust will obtain a sub-lease in the Victoria Hall and a sub-sub lease in the Queens Hall.

2.16 However, factors that the Charity Commission consider make the use of the property as proposed less suitable and effective include the following: -

- a. The Trust will no longer have a freehold interest in its property and therefore lose full control of it.
- b. The Commission is still unclear as to whether the proposals are the best ones that can be obtained for the Trust.
- c. The fact that the hotel operator will control bookings for the Victoria Hall could be detrimental to the Trust.
- d. There is concern as to how the community use covenants can be enforced.
- e. The fact that hire of the Hall will be restricted to registered charities and non-profit community groups might preclude other users.
- f. Any profit from income from letting Victoria Hall will not be available to the Trust.
- g. The refurbished Victoria Hall may not be the most suitable type of venue for recreational and leisure time use in the modern day.
- h. The preservation of the Victoria Hall is not an object of the Charity.
- i. The timing of the swap of the Princes hall for the Queen's' Hall will reduce income due to the Trust.
- j. The Commission has not seen any assessment as to which of the Princes and Queen's Halls best meets the needs of the public for recreational and leisure time occupation.

2.17 With regard to the terms of the Scheme itself, the Charity Commission make the following comments on their original draft wording

- a. There should be provisions relating to the premium and for applying the future income of the charity.
- b. There should be an obligation on the Trustee to appropriate the Queen's Hall for the purpose of the charity.
- c. There should be a mechanism for managing conflicts of interest which may arise between the Council and the Trust.

2.18 The Commission concludes that the Scheme as drafted, and the proposals negotiated with Mastcraft, cannot as yet be said to be a 'more suitable and effective use of the property' than the original purposes and that therefore the Trust needs to give further thought to the following in particular

- f. The extent of the charity's property
- g. The needs of the public in Ealing
- h. The use of the premium
- i. The Charity's future use of the Victoria Hall
- j. Managing conflicts of interest.

### **3. Matters for Consideration and Decision**

3.1 Officers have been in discussion with the Charity Commission over a number of years on behalf of the Trust, and the Commission itself drafted the proposed draft Scheme which was published in November 2019. Officers have reviewed the new issues raised by the Charity Commission in detail and have set out information and suggestions for consideration and approval by the Trustee, as appropriate, in the table at Appendix 4.

3.2 The issues that the Trustee need to consider have been grouped under main headings in the table together with any relevant additional background information and options to be considered. Recommendations have also been made but the Committee as sole Trustee must come to its own conclusion as to what response should be made in its name to the points raised by the Charity Commission.

3.3 By reason of the complexity of the issues, and the importance of the Trustee acting independently, the Trustee should consider whether it will be appropriate to hold a further meeting, to discuss the response to the Charity Commission in more detail, once officers have carried out further work in line with directions given by the Trustee at this June meeting.

### **4. Legal Considerations**

4.1 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 \(CC29\)](#).

4.2 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**

4.3 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.

4.4 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**

4.5 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**

4.6 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**

4.7 The Trustee approved the approach for the accounts for the Trust, at its meeting of [16<sup>th</sup> 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**

4.8 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 – Charity Commission Review April 2020
- Appendix 2 Draft Scheme
- Appendix 3 Community Use Protocol
- Appendix 4 Table of Charity Commission requirements and officers' comments on those recommendations

### **Background Information**

- Full [Council report 19 December 2017](#)
- General Purposes Committee reports – [15 March 2018](#), [15 January 2019](#), [16 April 2019](#) and [26 September 2019](#)
- 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**

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