

Minutes of the meeting of the General Purposes Committee

Date: Thursday, 30 July 2020

Time: 18:00

Venue: Virtual via MS Teams Live Events

Attendees:

Councillor Kamaljit Kaur Nagpal (Chair), Councillor Miriam Rice (Vice Chair), Councillor Mohammad Aslam, Councillor Jon Ball, Councillor Ranjit Dheer, Councillor Sarah Rooney, Councillor Gareth Shaw, Councillor Nigel Sumner, Councillor Hitesh Tailor

1 Apologies for Absence

There were none

2 Urgent Matters

There were none.

3 Declarations of Interest

There were none.

4 Matters to be Considered in Private

There were none.

5 Minutes

The Committee considered the minutes of the meeting on 29 June 2020.

Resolved: that the minutes of the meeting held on 29 June 2020, be agreed, and signed by the Chair, as a correct record of the meeting.

6 General Purposes Committee Report 30 July 2020

The Chair introduced the officers

Representing the Trust:

Adam Whalley Assistant Director, Capital Investment Programme

Helen Harris Director of Legal and Democratic Services

Advisors to the Council and attending only for the purpose of providing information to the Trustees on the background to the Mastcraft deal:

Andrew Parsons Interim Programme Manager

Jackie Adams Head of Legal (Commercial)

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Adam Whalley briefly reminded the Committee of the following details for context:

The General Purposes Committee was meeting that evening as the Victoria Hall Trust and committee members needed to ensure that they were aware of this and were acting in that capacity and not as members of the council. Adam Whalley had been asked to act on the Trust's behalf and had done so in preparing and presenting the report for the Trust's consideration. He confirmed that he had no direct role in the Council's proposed deal with Mastcraft and emphasised that any decisions were ultimately for the Trustees to make and that officers including himself were there to advise and support the Trustees in making any decision.

Adam Whalley provided a brief reminder for context:

- In October 2014, Cabinet agreed to prepare a brief and market an opportunity to refurbish and redevelop Ealing Town Hall.
- In 2016, following an OJEU compliant tendering process, the Council confirmed that Mastcraft would be the Council's preferred bidder to develop the Town Hall, in line with the Council's agreed brief. In order for the Council to be able to proceed into contract with Mastcraft it was necessary for the Council to secure the Trust's agreement to the disposal of Trust property.
- In its meeting of September 2019, the Trust gave its approval to the Council proceeding into contract with Mastcraft. However, because the Trust was a charity, the consent of the Charity Commission was also required. For that reason, an application was made to the Charity Commission to make a Scheme under s62 of the Charities Act 2011.
- The application was originally made to the Charity Commission in May 2017; in November 2019 the Charity Commission agreed to make the Scheme. However, the Charity Commission reviewed its decision as a result of a large number of representations from the public. The April 2020 response from the Charity Commission comprised the outcome of that review.
- In its last meeting of 29 June, the Trust considered a report which included a detailed analysis of the Charity Commission's review. The members of the committee reached a position on each of the matters raised by the Charity Commission and asked Adam Whalley to do more work on the basis of the direction given at the previous meeting.
- The report brought to that evening's meeting provided a summary of further progress which had been made since the June meeting. The report included a draft response to the Charity Commission at appendix 1 which Adam Whalley hoped reflected the direction given to him. Tonight's meeting was The Trustees opportunity to consider and comment on the draft response.
- The draft response still required further detail to be added relating to the value of the assets held by the Trust. This information was awaited pending receipt of advice from the Trust's independent valuer. To avoid further delay, Adam Whalley's suggestion was that

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the Trustees delegate the finalisation of response to himself, following consultation with the chair and the Director of Legal and Democratic Services.

- The report further recommended that the Trust authorised further work to be completed pursuant to the decisions reached at the previous meeting relating to making further updates to strengthen the Community Use Protocol although agreement on this would be subject to the agreement of Mastcraft and of the council.
- Finally, and in accordance with direction of the Trustee, the report recommends the appointment of an independent, non-voting co-opted member onto the committee, in relation to the committee's role as Trustee.

The Chair thanked the officer and asked if there were any questions on item 6.

Councillor Tailor was only able to attend part of the meeting on 29 June 2020 and understood that there had been a vote to appoint a co-opted member to the Trust but that this member had no voting rights and wanted to understand the value of that position to the Trust.

Councillor Tailor deferred his last question which related to the report and would wait until colleagues had commented before commenting further himself.

Ms Harris responded by saying that the reason why the Committee decided to appoint a non-voting co-optee was because the Charity Commission suggested that the Trust implemented procedures to manage the conflict of interest between the council and the charity, and the appointment of an independent co-optee would be one way to do that. The reason why it was a non-voting role was because there are legal challenges in having a non-Councillor sitting on the Council Committee even though this particular committee was a Trustee Committee. Officers could look at other solutions but there could be legal issues with that. If the current suggestion of a non-voting independent member was accepted by the committee then the position could be advertised in the September 2020 issue of 'Around Ealing'.

Councillor Tailor responded by saying that as he did not attend the whole of the last meeting he felt it would be unfair of him to seek to overturn a decision that had already been made saying that having been a non-voting member of another panel he still questioned the value of such a position as it seemed like a 'half-way house' but if members wanted the position to be appointed then he was willing to accept it.

Councillor Ball had three questions:

1. Bearing in mind the committee members were acting as Trustees rather than Councillors, was it acceptable to delegate items 1.3 and 1.4 (in the report) to officers? He understood what had been said, and that certain officers were assisting Trustees and other officers are on the Council-side but asked whether Trustees were abrogating their responsibilities if the Trust handed over the detail to two officers or should it meet again when the letter was ready?
2. Following on from Councillor Tailor's question and Ms Harris's response about an independent member. Would it have been better to appoint a trustee or ideally more than one who was independent and then the Trustees would meet as

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members of this Council Committee plus that person so that meetings held would be as a meeting of Trustees as opposed to being a Council Committee?. He went on to explain that the same individuals could be appointed to the role of Trustees, but that way would avoid the legal issue with having someone voting as a member of the Council Committee, because they would be voting as a Trustee instead.

3. On page 34 (of the Agenda pack for the meeting) in the draft letter towards the end there was a reference to a calendar year being allowed for the scheme to be modified and remade. Could the legal issue that this is alluding to be explained?

Councillor Dheer responded that, with regard to the first two points Councillor Ball raised, these were an attempt to go back to the decision that the Committee had already made on 29 June 2020. The Committee in that meeting had rehearsed all arguments in relation to the independent co-optee and also the role of the Officers and, Councillor Dheer thought Councillor Ball was clearly taking the Committee back to where it was on 29 June. A decision was made on the 29 June to explore the possibility of an independent Trustee, and about the role of Officers and their relationship with the Trustees; Councillor Dheer thought that the Committee should stick to the democratic decision made on 29 June.

The Chair thanked Councillor Dheer and agreed with him, saying that she knew that at the last meeting when the committee were asked to vote on the various items as they were presented to the committee, the committee did not always vote the same way each member of the committee voted in the way they thought best but she felt that the committee did need to go with the overall direction that the majority decision was taken on each item otherwise it would be going backwards and officers had worked really hard to prepare a response in the Appendix One based on all the decisions in that were taken at the last meeting which, she reminded the Committee, took two and half hours to discuss and decide. If Councillor Ball felt that that response was in accordance with what we agreed at the last meeting, then he could ask for clarification, but it was important not to go revisit the decision.

Councillor Ball responded by saying that decisions were made at the last meeting by majority votes so that there's no obligation on individual Councillors to abide by the majority decision at future meetings. That's not something that happens otherwise further discussion of a topic would never take place again which was done at every full Council and many Committees as well. In Councillor Ball's opinion it was not a question of a Council body having made a decision and then everybody had to abide by it, it was not like a Cabinet agreement, each Councillor was deciding individually.

The Chair allowed Councillor Dheer to respond, saying Councillor Ball was absolutely right that Trustees did not have to abide by the decision made on the 29 June Committee so when this matter was put to the Trustees, Councillor Ball could vote against this proposal, but felt the whole idea of going back and rehearsing the same arguments repeatedly was really undemocratic and inefficient. If Councillor Ball still felt very strongly about this proposal that he didn't agree with he would vote against it but Councillor Dheer did not think this issue should take the whole of the Trustee body back to where it was before 29 June.

The Chair reminded members of why the Committee was meeting today, At the last meeting the Committee spent a long time going through what the Charity Commission had written to the Committee in April 2020 and had gone through it point by point

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making decisions on each point on how it would be responded to. This additional meeting (on 30 July 2020) was not originally scheduled, but the committee voted at the end of the last meeting to have it to review what the response officers had prepared or were going to prepare based on the decisions of the committee at the meeting of 29 June. So the purpose of this meeting (of 30 July 2020) was to review what had been voted on and to obtain further clarity if required from the officers or if there were any questions then please raise however, having read the report and the appendices, the Chair believed that that officers had done an excellent job in reflecting what was agreed at the last meeting and the purpose of the meeting was to review this response,

The Chair asked if Officers wanted to say anything on the third point made by Councillor Ball

Ms Harris said there were many examples of Committees with independent non-voting co-optees but was not sure how the idea of a separate meeting would work and would need to look into that as well as the cost of doing it. The Committee had been completely clear on its approach with the Charity Commission.

Councillor Shaw stated that the Chair had reflected the direction that the majority of the Committee had voted to approve. He went on to ask about the community-use rates and how these had been calculated. Councillor Shaw had presumed and wanted to clarify that these rates would be comparable to the most recent rates that were being charged by the Council for Community use and that these would be applicable for the 10-year periods before review.

Mr Whalley's understanding was that the rates were comparable but deferred to Mr Parsons who confirmed that the rates came from 2016 and they had not been increased in the last 2 – 3 years. Regarding how long that rate would be applicable Mr Parsons stated that it was a 10-year arrangement in the Community Use Protocol. Although there was reference to index linking of rates in the Community Use Protocol, the base rates would be applied by the Community-Use Working Group which had representatives from the Trustees as well as representatives of Mastcraft. He added that in addition to the Community Working Group, the Council would still be able to review these rates and would be given the details at the time (of the agreement).

There were no further questions from the Committee.

The Chair made a point on the independent co-optee and that the Community-use working group could co-opt members from the community so the independent member could potentially be a member of the Trustees and also a member of the Working Group as well.; this had been mentioned by Mr Whalley

The Chair asked Ms Harris to draw up a role profile and advertise it in 'Around Ealing' and then officers could get started on an open and transparent process of recruiting an independent member, and then in mid to late autumn the panel could start interviewing.

Councillor Rice praised the report and the officers who created it stating that it was well put together and well explained and very useful. It had enabled the Committee to understand what was going on and ensured that decisions had been fully communicated to the outside world. Councillor Rice therefore wanted to thank officers for all the hard work that went into that.

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Councillor Ball asked whether, in the event that the committee was not unanimous in this meeting, there should be a final letter that stated that the Trust's decision reflected the views of a majority of Trustees rather than giving the impression that the decision was unanimous.

Councillor Dheer said he had heard what Councillor Ball had said and respected his position but that it was not normal practice to go into detail of the voting process at Committees when writing to an external body. Councillor Dheer added that he had nothing against this suggestion but would be guided by Ms Harris who had more experience in these matters as to whether it was accepted practice to indicate to outside bodies how members voted at a particular Committee. Ms Harris responded by saying it would be extremely unusual for an organisation when an action was taken on their behalf to say that this was only done with the support of some of the people who took part in this decision. For example, when a company decides on a course of action it would very unusual to explain that half the board voted against a particular direction. The Trustees are acting as a body and when it takes a decision everybody on that body of Trustees was responsible for the decision even if they individually did not vote in favour of it because that was the job of Trustees. What could be done was to send copies of the minutes which reflected the fact that the Trustees were having real debates and were not just a mouthpiece for the Council, which was in her view very definitely not the case.

However, Ms Harris did not recommend following a route where the letter that was written to the Charity Commission referred to the voting in relation to particular points of difference between the Trustees and felt that that would be highly unusual and counterproductive to what the Trustees were trying to achieve in the letter which was to express a view given, following consideration by the body of Trustees as a whole.

Councillor Shaw supported Councillor Dheer and he agreed fully with what Ms Harris had just said to put something like that in a letter responding to the Charity Commission would be detail that was simply unnecessary and verged, in his view, on the ridiculous. Councillor Shaw thought it was entirely possible for the minutes to be included. Of course, the minutes would be published anyway, and Councillor Ball's decisions could be seen there by everybody publicly.

Councillor Tailor backed what Councillors Dheer and Shaw had said. Councillor Tailor had been part of many organisation and had never shared details of dissenting voices and although the minutes might be public didn't feel even the minutes should be sent to the Charity Commission with the letter. He thought a straightforward letter should be sent giving the view of the Trustees and felt it undermined the rest of the Trustees should the other suggested approach be taken.

The Chair asked whether there were any other questions or comments.

Councillor Tailor stated that he was happy to go with the majority of Trustees and to delegate responsibility for finalising the report to the officers in consultation with the Chair and Vice Chair.

The Chair said if there were no other questions from the Committee asking if members were happy to agree the recommendations on page 25 of the report?

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Councillor Ball indicated he wanted a vote.

The Chair backed by Councillor Dheer decided to go through the items one by one. going through all the recommendations from 1.1 to 1.6.

Main report recommendation (on page 25 of 56 of the Agenda pack for this meeting).
Votes by the committee were as follows:

1.1 The Trustee Notes further progress which has been made in preparing a response to the Charity Commission following direction given by the Trustee at the meeting of 29 June 2020.

No votes against.

RESOLVED:

That,

The Trust authorised Recommendation 1.1

1.2 The Trustee reviews and approves in principle the draft response to the Charity Commission intended to reflect the Trust's position as included at Appendix 1 to this report

Vote

Councillor Rice	Agreed
Councillor Aslam	No vote heard.
Councillor Ball	Against
Councillor Dheer	Agreed
Councillor Rooney	Agreed
Councillor Shaw	Agreed
Councillor Sumner	Agreed
Councillor Tailor	Agreed
Councillor Nagpal	Agreed

7 Agreed and 1 Against

1 no vote heard

RESOLVED:

That,

The Trust authorised Recommendation 1.2

1.3 The Trustee authorises the Assistant Director Capital Investment Programme, following consultation with the chair and the Director of Legal and Democratic Services, to make any further changes to the draft response prior to dispatch,

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as required to best ensure that the consent of the Charity Commission is obtained to the application (as detailed in section 2.2 below)

Vote

Councillor Rice	Agreed
Councillor Aslam	No vote heard.
Councillor Ball	Against
Councillor Dheer	Agreed
Councillor Rooney	Agreed
Councillor Shaw	Agreed
Councillor Sumner	Agreed
Councillor Tailor	Agreed
Councillor Nagpal	Agreed

7 Agreed and 1 Against

1 no vote heard.

RESOLVED:

That,

The Trust authorised Recommendation 1.3

1.4 The Trustee authorises the Assistant Director Capital Investment Programme, following consultation with the chair and the Director of Legal and Democratic Services, to negotiate and complete, on behalf of the Trust, any required deed of variation of the contract of 5th November between the Council and Mastcraft, as required to facilitate and enable the implementation of the changes to the updated Community Use Protocol at Appendix 2 to this report.

Vote

Councillor Rice	Agreed
Councillor Aslam	Agreed
Councillor Ball	Against
Councillor Dheer	Agreed
Councillor Rooney	Agreed
Councillor Shaw	Agreed
Councillor Sumner	Agreed
Councillor Tailor	Agreed
Councillor Nagpal	Agreed

8 Agreed and 1 Against

RESOLVED:

That,

The Trust authorised Recommendation 1.4

1.5 The Trustee Notes that the council's approval will also be required to any deed of variation referred to at 1.4 above

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No votes against.

RESOLVED:

That,

The Trust noted the Council's approval will also be required for any deed of variation referred to in Recommendation 1.4.

1.6 The Trustee agrees to appoint an independent non-voting co-optee to the General Purposes Committee, in relation only to the Committee's role as Trustee of Victoria Hall, and authorises the Director of Legal and Democratic Services to take any actions to achieve this

No votes against.

RESOLVED:

That,

The Trust agreed Recommendation 1.6

7 Date of Next Meeting

The next meeting of the General Purposes Committee was provisionally scheduled for 17 November 2020 at 7pm.

The meeting finished at 7:10pm.

COUNCILLOR NAGPAL (CHAIR)