

Victoria Hall Trust – Consultation Responses

A. Scope and Background

1. As previously notified, and in accordance with guidance received from Jackie Adams, head of property legal, this document provides Ealing Voice's response to both the first consultation launched on 3 November 2017 and the second launched at the start of February 2018.
2. In the following we will be focussing on the continued relevance and viability of the 1893 Trust, the undesirability of the proposed disposal of trust assets to hotel operator Mastcraft Limited, and the conflict of interest inherent in Ealing Council's dual position as both borough council and trustee.
3. **It should be noted that such conflicts of interest are already well understood and the Charity Commission has produced guidance including that councils may not therefore be appropriate trustees.**
4. It was not clear initially that the matters referred to in the second consultation were going to be consulted on at all, and Ealing Voice wrote to the director of legal and democratic services to ask that this happened. We also believe that the consultation documents contain insufficient supporting evidence and therefore requested various information and documents under FOI.
5. **Ealing Voice has been prejudiced in its ability to make a fully considered response due to the continued failure by LBE to assemble essential factual information about the trust, to state its position regarding various matters clearly, and to make these, along with the terms of disposal, available as requested under FOI.**
6. We have asked repeatedly that our FOI requests, now more than three months old, are fully complied with and that the consultation period is extended until that information is in the public domain. Having grown weary of reiterating the same point we have now decided not to push for a further extension and to make a formal response based on information currently available. Our assumptions regarding the extent and condition of the trust's assets and its financial status are outlined below.
7. Ealing Council Members, acting as a collective body, are apparently the trustees (but see C12iii below). They hold fiduciary responsibility and must make decisions about the future of the trust, but have demonstrated little or no interest in understanding its purpose, scope or status and have passed responsibility to the General Purposes Committee without debate.
8. LBE has admitted mismanagement of the trust by not keeping proper records, including separate accounts, for many years.
9. **The proposed disposal by leasing of trust assets for 250 years, supposedly justified by financial problems in operating separate parts of the town hall complex, clearly demonstrates the conflict of interest mentioned above.**

B. Assumptions

1. The buildings and land covered by the trust (as funded by public subscription and from the trust's assets) include, but are not necessarily limited to:
 - i. the 'Memorial Hall' building containing the Victoria and Prince's Halls along with associated cloakrooms, toilets, backstage changing rooms and vestibules
 - ii. the former bar/storage building and its stair access located adjacent to the stage area on the northern elevation
 - iii. the stair tower on the western end of the building (accessed from Longfield Avenue) originally providing access to the upper balcony of the Victoria Hall
 - iv. the (basement) kitchen area immediately behind the western stair tower
 - v. the land to the rear (north) of the building extending to a distance equal to the projection of the aforementioned bar/storage building from the Memorial Hall building.
 - vi. easement to access the trust's premises via the main front doors on New Broadway and the associated hallways, landings, and staircase
2. LBE's own 'audited' accounts show the trust buildings have generated an average income before costs in excess of £250k pa over the last five years (over £300k in 2015/16).

We have not had access to the detailed accounts, however we believe this figure covering the Victoria and Prince's Halls does not include all sources of income (for example where a trades union has occupied a backstage office) and are sceptical that LBE is paying a fair rate when using the trust's rooms for its own events. LBE should be paying the community rate for off-peak use, and the full commercial rate for use at peak times.

Ealing Voice would still like to see a detailed breakdown of income

3. In the absence of a specific figure from LBE, the best estimate available of operating costs for the trust's premises (excluding provision for capital works) is around £200k pa.

(Obtained by scaling the five year average reported by LBE of £1m pa for the entire town hall site by 20%, being the approximate area covered by the trust's premises).

4. On the face of it the trust property appears to be in good structural condition, requiring some decoration and modernisation of services.

The supposed backlog of maintenance totalling £2.9m (2007 prices), as referred to in LBE's second consultation, covers the entire town hall site. As stated above, the trust premises represent around 20% of the total site area, however despite an FOI request no information (for example a schedule of dilapidations) has been produced by LBE to explain the extent to which this backlog applies to those premises.

5. Various sources of public funds should be available to the trust as an organisation with charitable purposes to carry out capital maintenance, and even improvement, of its premises if this is required to facilitate future operation.

Ealing Council, as trustee, appears to have done nothing to access such funds, nor to use income from the trust's property to fund its maintenance – as specifically required within the terms of trust.

C. Altering the Terms of Charitable Trust (primarily first consultation)

1. LBE has stated that the reason for modifying the charitable objects is that 'doubts have arisen as to the validity of the charitable purposes set out in the 1893 declaration in light of modern charity law'.
2. As far as we are aware the only possible 'doubtful' wording in the declaration is the inclusion of 'political' gatherings where these could relate to uses by political parties within the list of uses that may be made of the hall, rooms and offices. Although 'profit' from operations is referred to, it is stated that any such surplus of 'profit' would be applied to supporting philanthropic and charitable purposes in Ealing so we do not believe that this presents a problem.
3. Whilst it appears from our research into historic papers that the Charity Commission initially regarded the trust as not charitable in the sense that would fall under its jurisdiction, it subsequently modified this opinion and has accepted the spirit of the trust. Indeed in 1965 the Charity Commission repeatedly requested that the trust was formally registered (although LBE never did so) and has continued to exercise jurisdiction since. **Thus we do not accept LBE's justification for the change to the charitable objects as proposed in the first consultation.**
4. Taking the two consultations together, it seems that the real reason for LBE attempting to change the charitable objects at this stage is that the current declaration is incompatible with its desire to dispose of the trust's assets to hotel operator Mastcraft Limited by way of a 250 year lease. This would form part of a wider scheme for disposal of the entire town hall site, which LBE claims is unaffordable to operate. Mastcraft would subsequently use the assets to generate private profit - with limited community hire available at a discounted (but increasing) rate (see Section D below).
5. LBE also appears to claim that the trust itself is not financially viable. Were this to be the case then changes to the trust might be justified, however we refute the claim based on LBE's own figures (see assumptions in Section B above).

6. **The cost of operating (separate) town hall buildings is not an allowable reason within s62 of the Charities Act 2011 to vary the Victoria Hall Charitable Trust. Again the approach proposed by LBE demonstrates a failure to resolve the conflict of interest.**
7. The consultation documents claim that the Charity Commission has agreed new wording, but this is not the case. It has not yet considered the change to the charitable objects, but has instead required LBE to consult stakeholders prior to submitting a formal application. In this it has inter alia asked LBE to consider specifically whether the charitable trust needs to be modified at all. We think it is disingenuous of LBE to claim that its plans have received approval from the Charity Commission – which has confirmed in writing that they have not.
8. Section 62 of the Charities Act 2011 is quoted in full below:

62 Occasions for applying property cy-près

(1) Subject to subsection (3), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près are—

(a) where the original purposes, in whole or in part—

(i) have been as far as may be fulfilled, or

(ii) cannot be carried out, or not according to the directions given and to the spirit of the gift,

(b) where the original purposes provide a use for part only of the property available by virtue of the gift,

(c) where—

(i) the property available by virtue of the gift, and

(ii) other property applicable for similar purposes,

can be more effectively used in conjunction, and to that end can suitably, regard being had to the appropriate considerations, be made applicable to common purposes,

(d) where the original purposes were laid down by reference to—

(i) an area which then was but has since ceased to be a unit for some other purpose, or

(ii) a class of persons or an area which has for any reason since ceased to be suitable, regard being had to the appropriate considerations, or to be practical in administering the gift, or

(e) where the original purposes, in whole or in part, have, since they were laid down—

(i) been adequately provided for by other means,

(ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable, or

(iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the appropriate considerations.

(2) In subsection (1) “the appropriate considerations” means—

(a)(on the one hand) the spirit of the gift concerned, and

(b)(on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.

(3)Subsection (1) does not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près except in so far as those conditions require a failure of the original purposes.

(4)References in subsections (1) to (3) to the original purposes of a gift are to be read, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(5)The court may by scheme made under the court's jurisdiction with respect to charities, in any case where the purposes for which the property is held are laid down by reference to any such area as is mentioned in column 1 in Schedule 4, provide for enlarging the area to any such area as is mentioned in column 2 in the same entry in that Schedule.

(6)Subsection (5) does not affect the power to make schemes in circumstances falling within subsection (1).

9. LBE has not stated under which part of the above it considers the trustee is justified to change the terms of the trust (and dispose of its assets), however the meaning of 'cy pres' is 'as close as possible'. Broadly, the act allows for changes to a trust only when the circumstances to which it applies no longer exist, or if it is no longer viable in its original form, and requires that the assets of are applied to new charitable purposes closely aligned to those stated in the original trust.
10. We must therefore consider three points: Firstly, whether the trust is still necessary, secondly whether it remains viable in its original form, and thirdly (if it does not) how may it be modified to render it viable in the future, whilst remaining as close to the original as possible?
11. Is the trust still required?

An understanding of the intention behind the original building of the Memorial Hall and formation of the associated trust is helpful prior to any attempt to change its charitable objects for the future. Using funds raised from public subscription the original trustees created a place for public gatherings and entertainment in Ealing that private enterprise would not provide. They then established the Trust to uphold their principles and ensure the building was operated in the public good. Any surpluses that arose were to be used for charitable purposes and not for private profit. The founding trustees' vision is demonstrated by the fact that no private enterprise has ever provided a similar space in Ealing. With the rapidly growing and increasingly diverse local population the Trust's objectives remain as valid today, and are arguably even more important than when it was set up in 1893.

12. Is the trust viable in its original form, is the wording 'charitable', and is appropriate governance and management taking place?

- i. LBE has made specific claims that the trust is not financially viable as part of the second consultation and in communication with the Charity Commission. We dispute this on the basis that when viewed separately from the rest of the town hall the trust remains financially viable, as outlined in the assumptions in Section B.
- ii. As stated in C3. above, the Charity Commission, Attorney General and ultimately the courts are the arbiters of whether the current wording of the trust is acceptable. We have seen correspondence – released under FOI - between LBE or its agent and the Charity Commission. There is nothing within this to suggest that the trust is being compelled to change its wording nor that its objects are not accepted as being charitable.
- iii. The founding (named) trustees were also members of the Ealing Local Board (the forerunner of Ealing Borough Council) and appeared to operate both bodies with a sense of philanthropy and civic duty. When the original Ealing borough council was incorporated soon afterwards the duties of trustees passed formally to the council members collectively. We have not seen documents covering the trust relating to the later amalgamation of Ealing, Acton and Southall boroughs into the current London Borough of Ealing Council. We dispute that council members representing Acton and Southall wards should participate in governance of the trust and therefore whether the delegation of authority by the Full Council to the General Purposes Committee is valid within its terms.
- iv. Notwithstanding the above it is also the case that until LBE suggested varying the terms of trust and disposing of its assets all council members were either unaware or only vaguely aware of its continued existence. This clearly demonstrates that the current governance arrangements are not working.
- v. Nevertheless it is fair to say that the purposes of the trust have up until relatively recently remained quite close to those of the council itself. Although the trust has not been managed correctly for many years its buildings, and indeed increasingly those of the wider town hall, appear to have been used in approximately the manner originally intended. However the current financial climate has caused LBE to change its focus and reduce the scope of services provided and planned for across the borough.
- vi. **There is now increasing divergence between what LBE considers itself able to do as a borough council, and what the trust requires is done. With the best will in the world this presents an impossible conflict to resolve under current arrangements.**

13. What actions should be taken to ensure future viability?

- i. As requested by the Charity Commission in 1965, the trust should be formally registered as a charity to ensure their future oversight and to prevent a repeat of past mismanagement

- ii. The extent of the trust's property should be recorded at the Land Registry
 - iii. Full independent accounts including a balance sheet should be produced for the trust
 - iv. A schedule of condition of trust property should be produced along with a costed list of works required to bring all property up to a good standard of repair
 - v. Public grants and other sources of funding should be located to cover works identified in iv. above
 - vi. In order to remove the conflict of interest the trust should be varied under cy pres such that operation is fully separated from LBE by appointment of independent trustees. Such trustees should be carefully considered and ought to be individuals or organisations with views and purposes aligned with those of the original trustees.
14. **For the avoidance of doubt, Ealing Voice does not accept the wording of the new charitable objects provided, and requests that the trust is only varied as set out under C13vi. above. Due to the conflict of interest referred to it is essential that even if further changes are ultimately required under cy pres these are determined by new fully independent trustees or alternatively by the Charity Commission and Attorney General directly. No disposal, transfer or lease of assets should be made at this stage, nor should premises be made available under licence to occupy.**

D. Disposal or leasing of trusts assets to Mastcraft Limited (additional responses primarily to second consultation)

- 1. The trust holds assets with a capital value of many millions of pounds and a considerable rental value. Although – despite our FOI requests to do so - we have not seen the full proposed terms of disposal our understanding is that there has been no suggestion of paying a premium to the trust for the lease, nor any ongoing rent. LBE has been negotiating instead to receive a small premium and ongoing rental itself (as borough council), which if it occurred would amount to theft from the trust.

In light of the above, we put these questions to the council:

Have discussions with Mastcraft Limited moved on as a result of investigation into the trust precipitated by Ealing Voice? In which case what are the terms of disposal now being discussed? How are we to respond seriously to a consultation about disposal when we do not know the terms?

- 2. Nevertheless, we can comment on the general terms and arrangements for future operation outlined in the second consultation and on whether any disposal or leasing of assets to a profit making business would be desirable.

3. The important point to bear in mind is that from its initial construction the memorial hall has been operated on a not for profit basis. Thus it has been available at the least cost possible to stage events benefitting the public and for community groups to hire. Should operation be transferred to Mastcraft Limited, or another private company, then their intention will be to extract profits from its operation. Inevitably this will lead to increased costs of hire. Anyone who harbours the illusion that private business is so efficient that it can both reduce costs and make a profit should take a long hard look at the outcome of PFI contracts and other such arrangements. **Ealing Voice is therefore opposed fundamentally to the principle of any asset transfer or leasing to a for profit enterprise.**
4. We also need to consider the uses that the halls and other rooms will subsequently be put to by Mastcraft should the scheme go ahead.

The 1893 Trust requires these uses to be:

'Meetings, Entertainments, Balls, Bazaars, and other gatherings whether Social or Political'

It is clear that the overall intention here is for events serving a predominantly public audience.

5. We believe that the uses made by Mastcraft will be predominantly private functions. Thus the spirit of the original trust would be lost.

Whilst it may not be clear to a casual observer, Ealing Voice is firmly of the opinion that this is one of the main reasons behind the proposed alteration of the objects of the trust.

6. The consultation says that community access to the Victoria Hall will be retained with 10 free days use reserved to the Council each year. This assurance cannot be accepted as the Council has no right to reserve the premises for itself. The whole basis of the trust is that it separates these community's facilities from the Council which should pay the trust a rental every time it uses the hall. **Again LBE demonstrates the conflict of interest by blurring of lines between its own property and that of the trust.**
7. We are told that community access to the Victoria Hall will also be assured because community groups would pay reduced off-peak hire rates. However, the terms of the proposed deal show these rates will increase by 10% immediately and rise annually for the next 10 years. Thereafter they will be 60% of whatever the commercial hire rate is. But commercial operators of the hall can be expected to raise their hire rates much faster than the rate of inflation so the rate will rise in the same way for community users and price then out - just like so called "affordable" housing has turned out affordable to so few when it is set as a percentage of the market value.
8. The Council says a backlog of repairs and essential maintenance has built up over the years that the trust cannot afford. The information now provided suggests this is not accurate as the backlog concerns the entire town hall, and not just the Victoria Hall. It has built up because the town hall as a whole has

not been properly maintained, which has nothing to do with the trust and should not form part of this consultation.

9. The consultation recognises that alternative sources of funding maintenance could be found including from 'external grants and other income sources' or by raising commercial hire rates. These sources should have been fully investigated before the trust's assets were put up for sale.
10. As outlined in Section B, the accounts we have seen show that the Victoria Hall is the one part of the town hall complex that does generate revenue. The trust's terms say that the first use of its income must go on maintaining its assets, but income from the halls have never been put into their maintenance. For decades the Council has used it for its own purposes
11. LBE paints a grim picture of what might happen if the proposed lease doesn't go ahead. We do not accept this prognosis. It could be that the solution for the wider problems with the town hall might be to effectively extend the trust across the whole site, thus giving greater access to sources of funding for capital works. This is outside the scope of the current consultation, but Ealing Voice would be happy to discuss separately.
12. Finally, we feel that it is necessary to comment on the specific suitability of the group of companies operated under Mastcraft Limited. These companies have an interlinked web of debts and credits to each other rendering it almost impossible to determine where any true capital value is located - if indeed it exists. The group has also been late submitting accounts for the last two years.

E. Conclusions

1. LBE has failed to demonstrate that there is any justification for the proposed change of charitable objects, nor for the disposal or leasing of trust assets or grant of a licence to Mastcraft Limited.
2. Ealing Council should not be making any decisions about the future of the Victoria Hall Charitable Trust because it has repeatedly, and over decades, mismanaged the trust and shown itself to be incapable of resolving the conflicts of interest with its own operations.
3. Independent trustees should now be sought from appropriate local individuals and groups and it should be they, not LBE, who determine, within the terms of trust, how it will continue to operate moving forwards. The terms of trust should be altered by cy pres to allow this change of trustees, but not otherwise modified.

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