

Nia Morgan
Charity Commission

CSCorres1@charitycommission.gsi.gov.uk

Direct Dial: 020 7551 7687
Email: s.cass@bwblp.com

Your ref: **NM C-462805**
Our ref: SC2/217882/0001/LMS

20th June 2018

Dear Ms Morgan

Victoria Hall, Ealing

1. Background

1.1 We have been instructed on behalf of a local community group, Save Ealing's Centre (guided on this issue by one of its participants, Ealing Voice, with whom you have previously corresponded), to write to you in relation to the proposals made by Ealing Council as trustee (the "Trustee") of the Victoria Hall Trust (the "Charity") to vary the charitable objects and dispose of charitable property, the Victoria Hall (and related charity property) by way of a long lease to a commercial company, and the scheme/s they have applied to you for in that regard.

1.2 As you will be aware, the Trustee carried out public consultations, as required by the Charity Commission, in relation to the proposed scheme. Members of Save Ealing's Centre made representations to the Commission during this public consultation stage, but were directed that these representations should be made to the Council, which we appreciate is correct.

1.3 However, we are now instructed to write to the Commission directly to ensure that the Commission is aware of the significant wider concerns about the proposals, concerns over the validity and effectiveness of the consultation, as well as the egregious historic mismanagement of the Charity by the Trustee.

1.4 We understand that you are familiar with the history and context as the Charity Commission has had engagement with both the Trustee and interested individuals, and therefore do not propose to set out the detailed background further. Should anything prove unclear, we can of course elaborate further on relevant details. We have included the reference number under which we understand you have been corresponding with the Trustee on this matter.

2. Summary of concerns

2.1 This letter is intended, in particular, to put the Charity Commission on notice that there are significant concerns, which are highlighted briefly in this letter, relating to:

2.1.1 The flaws within the Trustee's public consultation process;

2.1.2 The issues within the proposals for the Charity; and

217882/0001/001562967/Ver.01

- 2.1.3 The concerning mismanagement of the Charity by the Trustee.
- 2.2 We would invite the Charity Commission to consider these objections at this stage and not to proceed to agree a scheme with Ealing Council until you have had the opportunity to fully investigate these issues.
3. **The failings in relating to the public consultation process**
- 3.1 As you may be aware, the Trustee carried out two separate consultations, one in relation to the proposed *cy-près* scheme to amend the objects and the second in relation to the proposed disposal of the Charity's property by way of long-lease to Mastcraft, a private commercial company.
- 3.2 There were clear flaws in the way the consultations were carried out and the way the proposals were presented by the Trustee which undermines the validity, fairness and effectiveness of the consultations. Persons affected will not have been adequately informed in order to comprehend and be in a position to make an informed response to the consultations.
- 3.3 Firstly, by carrying out two separate public consultations on issues which are so intertwined, interested persons were not presented with the full proposal but were instead presented with a very misleading picture. In isolation, these two consultations are highly misleading and should have been run together. It is likely many people reading the consultations will not have fully comprehended the scope and effect of the proposals (which were not made clear in any event) and would therefore have been denied the opportunity to fully respond.
- 3.4 **First consultation**
- 3.5 The first public consultation was flawed in that:
- 3.5.1 The consultation document suggested that the Charity Commission had already agreed to make a *cy-près* scheme. We would be surprised to find that was the case in advance of the consultation;
- 3.5.2 The consultation document suggested that the change of objects is primarily necessary due to concerns about whether the current objects are charitable. This is not correct and was therefore highly misleading as the current objects are accepted by the Commission to be charitable;
- 3.5.3 The consultation document does not explain how a *cy-près* occasion has arisen or which *cy-près* occasion applies and, in particular, fails to explain why the current objects need to be changed and, in particular, why they are no longer suitable or effective or why the Hall is no longer considered viable;
- 3.5.4 The consultation document does not make clear what the implications of the change of objects are i.e. that it enables the Trustee to carry out the objects by providing any hall, rather than continuing to hold the Victoria Hall;
- 3.5.5 The current objects provide for (a) the retention of the Hall for letting for community use and (b) the application of rental income to broad charitable purposes in Ealing. The new objects apparently remove the second object entirely, without providing any explanation for this significant narrowing of the current objects. The proposed new objects simply require the

provision of “a hall”. Such a change would fundamentally alter the function of the Charity and requires full and proper explanation by the Trustee.

3.5.6 Overall, no proper or sufficient explanation is given as to why the objects are being changed so significantly, why they need to be updated, or the implications of the change of objects on the activities of the Charity (the retention of the Victoria Hall and the wider objects).

3.6 **Second consultation**

3.7 The second consultation is similarly flawed and misleading, with key issues being:

3.7.1 The consultation document infers that the proposed disposal will effectively replace the current Charity property and that the Hall will be secured for continued community use. This is clearly not the case. The Trustee actually intends to dispose entirely of all of the Charity’s property out of the Charity to a private commercial company (Mastcraft) by way of a 240 year lease, with only limited community use being intended to be secured under the lease. This will also result in the rental income ceasing to be applicable for charitable purposes and becoming due to Mastcraft, but this is not made clear at all. The arrangement with Mastcraft does not effectively replace the current charitable trusts and will not result in the provision of “a hall” by the Trustee for the purposes of the proposed new charitable objects;

3.7.2 Of course, if the Victoria Hall and related charity property is disposed of to Mastcraft by long lease (which forms part of a larger transaction by the Council under which the Council will benefit significantly), this ought to result in a large premium being due to the Charity in respect of the Hall. No reference at all is made to the lease premium which will be due to the Charity within the consultation document, and no explanation offered as to how the apportionment will be calculated in relation to the disposal of the Council’s own property;

3.7.3 Significantly, no explanation is given as to how the Trustee intends to use the funds received under the disposal which will become Charity funds. This is particularly relevant given that it appears that the proposed new objects would be limited to provision of a hall (although why, is unclear, as noted above) and the wider object, which currently allows the income of the Victoria Hall to be applied for charitable purposes in Ealing, will apparently disappear;

3.7.4 Under the existing first charitable object the Charity can let the Hall either with or without rent. The proposals do not reflect this current benefit;

3.7.5 The proposed lease provides for the Council itself to have free use of the Hall for a certain number of days. It is unclear on what basis this is appropriate. This appears to be an unauthorised trustee benefit, but this is not addressed within the consultation document.

4. **The issues within the proposals for the Charity**

4.1 Our client also has serious concerns about the proposals themselves (in addition to those mentioned above), which we share, and these include:

4.1.1 The trust deed for the Charity refers to the Victoria Hall itself and other associated rooms and offices. However, it appears that the Trustee currently treats the Charity property as only comprising of the Hall. It appears that the Trustee is unable to identify exactly what the Charity property comprises of and no reference is made to the associated rooms in any of the consultation papers. Clearly it is fundamental to any scheme that all the Charity property is properly identified;

- 4.1.2 It is unclear why the charitable objects of the Charity are no longer suitable and effective given that it continues to be possible to rent the Hall for community use and apply the rental income for wider purposes.
- 4.1.3 Further, given that the Trustee has not kept separate accounts for the Charity and may have applied the rental income into its own funds, it is difficult to see how the Trustee can have concluded that the Charity is not financially viable (see further below re rental income and mismanagement) and so why the Hall cannot be retained;
- 4.1.4 It is not clear how much of the disposal proceeds will be due to the Charity in respect of the Hall and associated Charity property and how these proceeds will be used;
- 4.1.5 The Trustee appears not to have properly considered all available options, which is inevitable given that the Council's scrutiny committee meeting minutes from the time of considering the disposal to Mastcraft state (incorrectly) that the Victoria Hall Trust was "moribund" and had been for a hundred years! It therefore appears that the Trustee may not, when deciding whether to enter into the disposal, have considered what is in the interests of the Charity (which it treated as no longer in existence). Rather the Trustee's primary motive appears to be to dispose of its own assets of which it treated the Victoria Hall as part. The existence and consequential implications of the fact that the Victoria Hall is held for the Charity appears to have been a mere afterthought;
- 4.1.6 It is not clear why disposing of the Hall and associated Charity property on a long-lease to a commercial company is in the interests of the Charity. The long-lease to Mastcraft does not provide an appropriate or effective substitute for the provision of the Hall by the Charity. The rental income will become due to a commercial company and will be lost to charity;
- 4.1.7 It is not clear what alternatives have been considered in order to retain the Hall for charitable purposes, such as transfer of trusteeship to a community organisation, securing more rental income through broader marketing of the Hall, borrowing against the Hall to fund refurbishment and so on;
- 4.1.8 The proposals for community use under the draft lease provisions with Mastcraft are inadequate and:
- (a) The Trustee itself is given a certain number of days' free use of the property, despite historically rent being paid to the Charity for private use by the Council;
 - (b) It appears some of the existing Charity property would not be available for community hire at reduced rates;
 - (c) The days and times for which reduced rates would apply are restricted;
 - (d) Conditions are introduced (that are not found within the original trust deed) which unnecessarily restrict the individuals/bodies who would be entitled to reduced rates; and
 - (e) The income from the lettings would be kept by Mastcraft rather than being held by the Trustee for the purposes of the Charity.



5. **The mismanagement of charity finances by the Trustee**

5.1 Our clients have very serious concerns about the Trustee's historic mismanagement of the Charity.

5.2 Significant examples of these concerns include:

5.2.1 The failure to register the Charity with the Charity Commission, despite repeated requests from the Commission to do so;

5.2.2 Inadequate record keeping, which in recent years appears to have broken down altogether. Separate accounts have not been kept for the Charity for decades, the income of the Charity cannot be identified and has not been kept separate to the trustee Council's own funds, and it is not clear how charitable income has been applied or whether it has been used for the Council's own purposes in breach of trust;

5.2.3 Astonishingly, the Trustee is apparently unable to identify the property owned by the Charity. The trust deed establishing the Charity clearly identified ancillary rooms to Victoria Hall which also formed part of the Charity's property, but the Trustee have treated the Charity's property as consisting of only the Hall itself which is manifestly incorrect and may mean that the Council has been using the associated rooms free of charge for its own private use, in breach of trust;

5.2.4 The Trustee has apparently not been paying the Charity for the Council's own use of the Hall, despite being required to do so. This would be an unauthorised trustee benefit which the Trustee has not addressed; and

5.2.5 It appears that the Trustee may have been receiving income from the Charity's property into its own accounts, in a clear breach of trust.

6. **Next steps**

6.1 In light of these serious objections and concerns, we seek urgent confirmation from the Charity Commission that no *cy-près* scheme will be granted to the Trustee until the Council has given satisfactory answers and explanations as to the issues raised above.

6.2 In light of the failure to identify Charity property, the lack of record keeping and accounts and the possible mis-application of historic income and failure to pay for private use of the Charity property, it is difficult to discern how the Trustee can have satisfied itself that the Hall can no longer be used for its current charitable objects and is no longer financially viable. It may be that, if accounts are re-constructed and any rent which should have been paid by the Council for its own use is refunded, it will transpire that the Charity has significant additional resources with which to maintain the Hall.

6.3 In light of the significant mismanagement and failings, we also strongly urge the Charity Commission to consider exercising its powers to remove Ealing Council as trustee of Victoria Hall Trust and transferring the trusteeship into new hands which should ideally be made up primarily of trustees local to, and involved with, the community.

We can provide a more detailed analysis of the objections and concerns if required or provide additional documentation on which we have based our advice; please let us know if this would be helpful.



If you have any queries, please do not hesitate to contact Sophie Cass of this firm.

Yours faithfully

Bates Wells Braithwaite