

Charity Commission for England and Wales

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For the attention of Ms Nia Morgan

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

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29 January 2019

Dear Sirs

Victoria Hall, Ealing

We write further to our letter of 20 June 2018, on behalf of our client Save Ealing's Centre (guided on this issue by one its participants, Ealing Voice) in relation to the proposals made by Ealing Council as trustee (the **Trustee**) of the Victoria Hall Trust (the **Charity**) to change the purposes of the Charity and to dispose of the Victoria Hall (as well as the more recent proposals to swap part of the Charity's property, the Prince's Hall, with part of the Council's own property).

For your information, we have had sight of your correspondence with Browne Jacobson LLP dated 3 August 2018 to 29 October 2018 following a Freedom of Information request made by our client to Ealing Council.

We have also now had sight of Mastcraft's planning application (which will of course be considered by the Council itself as the local planning authority) submitted last week. We note that the plans involve altering (and demolishing part of) the Charity's historic Victoria Hall as well as converting the Prince's Hall into a private hotel health and fitness centre with swimming pool, despite Charity Commission consent to the disposal of the Charity's property not having been obtained.

1. Summary of the background, the Trustee's proposals and issues arising

1.1 To recap, we understand the following:

1.2 The Charity was established on 6th November 1893 with, broadly, the charitable objects of (a) the provision of the Victoria Hall and associated rooms and offices, with or without charge, for the uses described in the Declaration of Trust (which provide for use as a community hall) (the **First Object**) and (b) the net income after deduction of expenses and upkeep etc. to be applied to charities in Ealing (the **Second Object**).

1.3 The Charity Commission has long recognised the Charity as charitable (and, in any event, it is agreed that the purposes are treated as charitable as a result of the application of the Charitable Trusts (Validation) Act 1954). Nevertheless, despite repeated requests from the Charity Commission including as far back as 1958, the Council has failed to register the Charity on the Register of Charities.

1.4 The Council has egregiously and repeatedly breached its trustee duties, having failed to protect and identify the Charity's funds or to keep proper accounts for the Charity separate from its own.

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The Council appears to have transferred surplus income into its own funds and utilised the Charity property for its own affairs without compensating the Charity, breaching the trustee no profit rule but has not yet been obliged to account for this unauthorised benefit.

- 1.5 In 2014, Ealing Council proposed the redevelopment of the Town Hall, of which the Charity's property forms part. The Council claims that, at this time, it was not apparently aware that the property belonged to the Charity as it regarded the trusts as "moribund". Therefore the Council embarked on this proposal without having any regard to the interests of the Charity.
- 1.6 The outcome was that the Council agreed to enter into an arrangement with a commercial company, Mastcraft, to dispose of the Town Hall, including the charity property, by way of a long lease of 250 years. Under these proposals, we understand that Mastcraft will develop part of the Town Hall (including the charity property) into a hotel and lease back part of the property to the Council for civic use. It is clear that, in supporting these proposals, the Council was acting solely in its own interests, as it was unaware of the existence of the charitable trusts.
- 1.7 Despite now being aware of the existence of the charitable trusts over the Charity property, the Council nevertheless seeks to push on with these proposals in relation to the Town Hall, including the Charity property. No attempt has been made to separately consider what is in the interests of the Charity or to consider any other more suitable options specifically related to the Charity/its property so as to allow retention and continued use of the Charity property for its current purposes.
- 1.8 We are not aware of the precise terms of the Council's arrangement with Mastcraft as it relates to the Charity. However, we understand that under the proposals/lease to Mastcraft, it is intended that only limited community use will be secured of the Victoria Hall and parts of the Town Hall. The Council, as Trustee, suggest that this will in some way fulfil the First Object of the Charity. Given the very limited community use proposed, that the community use is only secured for a short period of ten years and that the property will be owned and operated by Mastcraft, a commercial organisation, which will receive all the income generated from letting for community use and retain such income for its own commercial use, this is clearly not a charitable activity/carried out in furtherance of the First Object.
- 1.9 The Trustee also seeks to require Mastcraft to allow the Council to use the Charity's property for a certain number of days per year, which is an unauthorised trustee benefit.
- 1.10 In order to facilitate its proposals, the Council, as Trustee, has sought a scheme from the Charity Commission to update the First Object and to authorise the disposal of the Victoria Hall which forms the Charity's main asset. Under the revised First Object, the Council, as Trustee, would be able to fulfil the First Object through the provision of *any* hall, effectively allowing it to dispose of the Victoria Hall.
- 1.11 As we noted in previous correspondence, the Council, as Trustee, embarked on two separate consultations in relation to (a) the proposed scheme to update the First Object and (b) the proposed disposal of the Victoria Hall, but the manner in which it was carried out, and in particular, the separation of these two issues which are intertwined (and, indeed, which are likely to both require to be given effect to under one scheme), was misleading and local inhabitants were therefore not sufficiently informed in order to be able to understand the proposals and respond thereby rendering the consultation flawed.
- 1.12 Nevertheless, a large number of responses were received. We have seen the Council's solicitors' email to the Commission summarising these responses, but which does not match up

with the actual responses received as detailed in the Council's own report (as detailed further below).

- 1.13 Our client is firmly of the view that any significant change to the Charity's objects and/or disposal of the Victoria Hall and related property is not in the interests of the Charity. We also take the view that any disposal of the Victoria Hall would require a change to the objects of the Charity by cy-près scheme, for which no case has been made, as further detailed below.
- 1.14 We understand that the Council has now further developed its proposals. The Council, as Trustee, now proposes to "swap" its own property, the Queen's Hall, with part of the Charity's property, the Prince's Hall, in order to facilitate the deal with Mastcraft in the Council's own interests and in order to enable Mastcraft to take control of the Prince's Hall. The Council argues that this swap is in the interests of the Charity but we set out further below why this is not the case.
- 1.15 We have also seen the Council's correspondence with the Charity Commission in relation to identification of the Charity's property, which is plainly wrong, as detailed further below.
- 1.16 As we noted in our previous correspondence, it would in any event be inappropriate for the Charity Commission to proceed with any scheme whilst the Council, as Trustee, has failed to register the Charity on the Register of Charities or identify its property or to provide proper details of the terms of the deal with Mastcraft and the amount due to the Charity.
- 1.17 The above raises serious concerns about the Council's suitability to continue to act as trustee.

2. **Historic and ongoing mismanagement**

2.1 As set out in our letter of 20 June, the Trustee has demonstrated long term mismanagement of the Charity. The continued failure of the Trustee to address any of these issues raises concerns in relation to their suitability to have trusteeship and we repeat our request that the Charity Commission considers exercising its powers to remove the Trustee from office. In the interim, please confirm that the Charity Commission has raised the multiple issues of historic and ongoing mismanagement directly with the Trustee.

2.2 **Failure to act in the interests of the Charity**

2.2.1 The Trustee continues to primarily be motivated by the overall disposal of the Town Hall rather than the interests of the Charity. Even in its own briefing report¹, the Trustee openly acknowledges that it was not until after the entire tender process had been carried out and a preferred bidder (Mastcraft) selected that the Trustee discovered the existence of the Charity.

2.2.2 In the most recent document available setting out the Trustee's position², once again it is clear that the Trustee continues to consider the Mastcraft deal primarily as it relates to the benefits for the whole Town Hall site rather than specifically the interests of the Charity and it appears that no attempt has been made to properly consider any other options in relation to the future retention and use of the Victoria Hall and related charity property in the interests of the Charity.

2.2.3 As noted below, any consideration of the financial viability of the Victoria Hall and related charity property is impossible until such time as the Council has identified the assets and income (including historic income) of the Charity and has reimbursed the Charity for the funds which it

¹ 15 March 2018, report to General Purposes Committee of Ealing Council

² Paper ahead of General Purposes Committee of Ealing Council meeting on 15 January 2019

appears to have improperly applied into its own funds or which reflect its free use of the Hall for its own Council purposes.

2.3 **Failure to register**

2.3.1 It has now been 62 years³ since the Trustee was informed that the purposes of the Charity are charitable and therefore under the jurisdiction of the Charity Commission, and 52 years⁴ since the Trustee received their *third* reminder from the Charity Commission of their duty to register the Charity and a request that the matter received "*immediate attention*". An inordinate and inexcusable amount of time has since passed and yet the Trustee has still entirely failed to carry out their duties in this regard.

2.3.2 Please confirm that the Trustee will be obliged to register the Charity immediately and, in any event, prior to any scheme or consent of any type being granted.

2.4 **Failure to keep accounts**

2.4.1 The Trustee continues to assert the Victoria Hall is not viable, and yet it is unclear how the Trustee can possibly reasonably have come to this conclusion when they have entirely failed to keep proper separate accounts for the Charity for a number of decades. Recent figures (set out in the Council's report to its General Purposes Committee) suggest that the Hall is operating with an annual surplus.

2.4.2 In the Council report referred to above dated 15 March 2018, the Council notes that it will require accounts to be maintained for the Charity "*in the future*". Clearly this is not sufficient, and almost a full year later we note that accounts are still unavailable.

2.4.3 We believe that the Charity Commission ought to require the Trustee to undertake a historic forensic accounting exercise to identify the historic annual income, free Council use of the Charity property and charitable funds in order to provide an accurate and up to date financial position for the Charity, including reimbursing the Charity for funds misapplied into the Council's own coffers and in respect of its own use of the Charity property without payment. It is only once this exercise has been undertaken that an accurate assessment of the Charity's financial security and viability of the Hall can be reached.

3. **Identification of the Charity's property**

3.1 It is crucial that, prior to any further steps being taken, the Trustee properly identifies the Charity's property and income (including historic income). As well as being required in order to enable the Trustee to fulfil its core duty to protect the Charity's assets, any assessment of the proposals and the future of the Charity cannot be carried out without this information. Indeed, were the disposal to Mastcraft to go ahead, the share of the proceeds of disposal of the Town Hall or rental income due to the Charity cannot be ascertained and allocated without a proper identification of the extent of the Charity's assets.

3.2 In the Council's report to the General Purposes Committee of 15 March 2018 referred to above, the Council notes that it has concluded, as a result of research, that the Charity's property comprises of "*the Victoria Hall, the Princes hall and the adjacent toilets*"

3.3 We note that the plan of the Charity's property submitted to the Charity Commission includes the room identified on the plan as "*1.04 Artists Room*" as well as a toilet.

³ Letter from the Treasury Solicitor, 8 October 1956

⁴ Letter from J Kelly of the Charity Commission, 3 August 1966 – copy can be provided if required

- 3.4 Nevertheless, in the Council's more recent report of 15 January 2019 to the General Purposes Committee, the Council now identifies only *"the Victoria Hall and the Princes Hall"* as belonging to the Charity. The report provides that *"The 1893 Declaration refers to the "Victoria Hall and the rooms and offices belonging thereto" but....not possible to be exactly sure which areas of the Town Hall are the subject of the Declaration of Trust.the Council is proceeding on the basis that the Trust property comprises the Victoria Hall and the Princes Hall....As a result of the inclusion of the Princes Hall within the scope of the Trust, the application to the CC also includes a proposed "land swap" of the Princes Hall and the Queen's Hall as part of the disposal to Mastcraft"*.
- 3.5 It is unclear whether the Council now seeks to exclude the Artists Room and toilet which are not mentioned in the most recent report.
- 3.6 In any event, our clients find the Council's conclusions in relation to the scope of the Charity's property extremely surprising given that the Declaration of Trust relating to the Charity specifically refers to *"the said Hall and the Rooms and Offices"* associated with it (our emphasis added). This clearly indicates a wider part of the Town Hall building belongs to the Charity than simply the Halls and toilet.
- 3.7 Our client has carried out its own research and concluded that the Charity property consists of a larger part of the Town Hall building. We attach diagrams of the basement and ground floors with the parts identified as belonging to the Charity by our clients outlined.

4. **The proposed scheme and arrangements**

4.1 **Change of objects – no cy-près occasion has arisen**

- 4.1.1 The Trustee seeks a *cy-près* scheme on the basis that the current objects are uncertain under charity law and do not provide a suitable and effective method of using the property.
- 4.1.2 The email from the Trustee's solicitors to the Charity Commission dated 8th October 2018 suggests that a *cy-près* occasion arises because *"the current objects are not exclusively charitable"*, which is misleading. The Charity Commission has long recognised the Victoria Hall as charitable. The Trustee's solicitors further suggest, in the same email, that *"the activities of the charity will not change as a result; it will still be operating the Hall for community use"*. This is patently incorrect. The Victoria Hall will be owned by Mastcraft under a long lease and while Mastcraft may permit some limited community use of the Hall (as further described below), the Trustee will no longer be providing the Victoria Hall for the First Object so the Charity's activities will fundamentally alter.
- 4.1.3 The solicitors seek to argue that a *cy-près* occasion has arisen under s62(1)(e)(iii) although do not explain why or comment on how regard has been had to the "appropriate considerations" (the spirit of the gift and current social and economic circumstances) as required by s62(2).
- 4.1.4 It is apparent that the Trustee's real motivation in seeking a change of objects is to enable the Council to dispose of the entire Town Hall site for the Council's own benefit. This objective can only be achieved under current proposals if the Charity's property is also disposed of (and we note below that this requires a *cy-près* scheme).
- 4.1.5 The proposed new First Object would allow the Trustee to provide any hall, rather than the Victoria Hall, thereby laying the groundwork for the disposal of the Victoria Hall to Mastcraft.

4.1.6 While we can appreciate that the First Object could benefit from some limited updating to bring it into line with modern “community hall” objects, the case for any more extensive changes has not been made out. Indeed, we have noted that any evaluation of the current objects cannot be undertaken while the extent of the Charity’s assets and income (including historic income and reimbursement of funds misapplied) is unknown as well as the full range of options for future use of the Hall explored (including transfer of trusteeship to another charity or community organisation).

4.1.7 We understand that the Trustee now proposes to retain the Second Object.

4.2 **Disposal of the Victoria Hall and related property would require a cy-près scheme**

4.2.1 Separately, the Trustee seeks the Charity Commission’s authorisation to the disposal of the Victoria Hall and related property on a long lease to Mastcraft.

4.2.2 Our view is that such disposal would require a scheme on two grounds:

(a) The Victoria Hall is integral to the purposes of the Charity and so the purposes of the Charity can only be fulfilled by retaining the Hall. No disposal can be made without changing the Charity’s objects by cy-près scheme, for which a satisfactory case that a cy-près occasion has arisen has not been made.

(b) The Trustee does not intend to invest the proceeds of sale (the Charity’s share of the premium payable under the long lease) in replacement functional permanent endowment. A scheme is therefore required to authorise the sale and make provision for the proceeds.

4.2.3 In relation to the former, the requirement to retain and provide the Victoria Hall is not a mere administrative restriction. The provision of the historic and commemorative Victoria Hall is fundamental and must be regarded as an essential part of the current objects of the Charity and accordingly this is not a case where authority can be obtained to dispose of the Hall without a cy-près scheme. In this regard, we note the comments made by Dillon LJ in *Oldham Borough Council*:

“There are, of course, some cases where the qualities of the property which is the subject matter of the gift are themselves the factors which make the purposes of the gift charitable, e.g., where there is a trust to retain for the public benefit a particular house once owned by a particular historical figure or a particular building for its architectural merit or a particular area of land of outstanding natural beauty. In such cases, sale of the house, building or land would necessitate an alteration of the original charitable purposes and, therefore, a cy-près scheme because after a sale the proceeds or any property acquired with the proceeds could not possibly be applied for the original charitable purpose. But that is far away from cases such as the present, where the charitable purpose - playing fields for the benefit and enjoyment of the inhabitants of the districts of the original donees, or it might equally be a museum, school or clinic in a particular town - can be carried on other land.”

4.2.4 The Victoria Hall has a particular and irreplaceable quality. It is therefore not sufficient to dispose and replace the property with another Hall (and indeed, under the current proposals, the Hall would not be replaced in any event).

4.2.5 The Victoria Hall was constructed in 1888 (together with ancillary rooms beneath and to the adjacent) and was funded by public subscription in celebration of Queen Victoria’s golden jubilee in 1887. The recitals to the Declaration of Trust record that the Victoria Hall was

constructed from funds raised by public subscription from the local inhabitants to commemorate the Jubilee. A huge number of public subscriptions were collected, including from local people and eminent individuals such as Lord Rothschild.

4.2.6 The Hall itself was designed by a renowned Ealing architect, Charles Jones. It is therefore steeped in the history of the local community. In December 1888 the Victoria Hall was formally opened by the Prince of Wales (the future King Edward VII) accompanied by the Princess of Wales and the future King George V. The Prince was presented with a golden key with which to open the door, a local choir sang the Hallelujah Chorus, and the Prince himself declared Victoria Hall to be *“a handsome building, lofty and well-proportioned and admirably adapted for all the purposes of a public hall”*. To this day, an ornate plaque at the entrance to Victoria Hall commemorates the grand opening. The Victoria Hall is a historic and important Grade II listed heritage property which is held for the benefit of the inhabitants of Ealing. It is not therefore equivalent to a recreation ground (the property in question in the Oldham case) which can be sold and replaced with other suitable land as provided by the last sentence of the extract above.

4.2.7 It is clear that the First Object of the Charity was never merely the provision of “a” hall, but of this hall. The origins of the Victoria Hall in funding by public subscription, the particularly impressive architecture, and the history of the Hall itself are irreplaceable. The Victoria Hall is well-loved by the local community (as evidenced by the passion with which they continue to challenge and resist the attempts of the Trustee to dispose of the property) and well used for a wide variety of functions including cultural events, dances, music and public debates.

4.3 **Disposal is not in the interests of the Charity**

4.3.1 In any event, a case for disposal being in the interests of the Charity has not been made out by the Trustee to any degree of clarity or satisfaction.

4.3.2 The Charity’s property generates an estimated £250,000 per annum of lettings income and, in the absence of any proper accounts to the contrary, would therefore appear to continue to be financially viable and to have an annual surplus profit (which, if profit from previous years is identified and properly allocated to the Charity, may mean there is a substantial pot available for ongoing maintenance and running costs).

4.3.3 The Trustee does not appear to have fully considered alternative options in relation to the retention and provision of the Victoria Hall. As noted, the Council’s main motivation appears to be the disposal of the Town Hall for its own benefit. Fundamentally, the proposed deal has been driven by the Trustee’s desire to dispose of its own property (the wider Town Hall complex) rather than solely considering the best interests of the Charity. Once it was discovered that the Victoria Hall Charity existed, the Trustee should have gone back to the drawing board to consider the options and interests of the Charity.

4.3.4 The plans submitted by Mastcraft include the alteration and even demolition of part of the Charity property. Artist’s room 1.04 will be demolished entirely and become a bedroom within the Mastcraft hotel complex, and part of Victoria Hall itself will be altered (including repositioning the notable Rose Window). We have not seen that this has been raised in correspondence with the Charity Commission.

4.3.5 We also note that the report to the General Purposes Committee of 15th January 2019 provides that, as the Council did not receive an appropriate bid following the listing of the whole town hall as an ACV, negotiations with Mastcraft continued. This does not recognise that it was of course inappropriate (if not impossible) for interested parties to put together a proper ACV bid given that the Trustee has failed to identify the charitable property.

- 4.3.6 As noted above, the Trustee suggests that the Hall will be secured for community use under the terms agreed with Mastcraft. As we have set out, this is simply not the case. Conditions are to be introduced (which are not present in the Charity's governing document) which restrict the individuals/bodies who would be entitled to reduced rates; the days and times for which reduced rates are available are limited; rental income will pass to the commercial tenant Mastcraft rather than to the Trustee and the arrangement only endures for a short time period (10 years). So while very limited community use will be secured, to all intents and purposes, the Hall and its income is lost to charity.
- 4.3.7 Further, under current proposals, the Hall would not be replaced. Any premium due in respect of disposal would not be reinvested in a replacement hall. It is not clear why this is so (and it is apparent that this option has not even been considered) or how the Trustee intends to apply the disposal proceeds. Disposal without replacement would require authorisation by scheme.
- 4.3.8 Further, the proposed terms of the deal with Mastcraft are unclear. The extent of any disposal proceeds or rental income due to the Charity have not been identified which means that no proper consideration of the interests of the Charity can be made.
- 4.3.9 Additionally, we have noted that the Council will receive a number of days' free use of the property. This would of course be a trustee benefit, but no justification has been offered to explain why this would be permissible without proper rent being paid to the Charity.
- 4.4 **Proposed hall swap**
- 4.4.1 We have noted that we now understand that the Trustee's proposals have been developed so that, now, as well as proceeding with the disposal of Victoria Hall to a commercial company under a long lease, the Trustee proposes to "swap" part of the existing Charity property (the Prince's Hall) with another property currently owned outright by the Council (the Queen's Hall). The Prince's Hall is situated underneath the Victoria Hall, so within the "charity complex".
- 4.4.2 It appears that the first time that this swap was suggested by the Trustee was in the correspondence with the Charity Commission, and was not included within any of the public consultations, which further undermines those consultations.
- 4.4.3 We have noted that it appears from the Council's recent report to the General Purposes Committee that the proposed land swap arises primarily as a result of the identification of the Prince's Hall as belonging to the Charity ("*As a result of the inclusion of the Princes Hall within the scope of the Trust, the application to the CC also includes a proposed "land swap"*") and not out of consideration of the interests of the Charity. The plans attached to Mastcraft's recent planning application are dated March 2018. These plans clearly show Mastcraft's plans to alter the Victoria Hall and to convert the Prince's Hall into a hotel gym and swimming pool have been in existence for some time and pre-date the proposed "swap".
- 4.4.4 The matter is complicated further as the Queen's Hall will also be leased by the Trustee to Mastcraft and subsequently leased back to the Trustee. To this end, the Charity's (assumedly) freehold interest in the Prince's Hall would be replaced with merely an interest under a sub-lease. No information appears to have been provided by the Trustee as to what the terms of such sub-lease would be or its duration; or what the timeframe would be between the disposal to Mastcraft and the sub-lease back (which, as the Trustee appears to envisage refurbishment of the entire Town Hall site being completed first, presumably means there would be a substantial period when the Charity's property would be entirely unavailable for use?).
- 4.4.5 The assertion that the swap is in the interests of the Charity is misguided:

- (a) Our clients are surprised at the Trustee's assertion (in an email of 29th October 2018 from solicitors to the Council to you) that the Queen's Hall "*is generally a more impressive room than the Prince's Hall*". Prince's Hall is rented out at a peak hourly rate of £240; but the peak hourly rate for Queen's Hall is just £180. Clearly the Trustee is not in fact of the opinion that the Queen's Hall is a more impressive and functional room than Prince's Hall, or this would surely be reflected in the current hourly rates (which are, of course, set by the Trustee).
- (b) The Queen's Hall is unsuitable as a replacement property for a number of other reasons: it is less accessible than the Prince's Hall, has very poor acoustics, and has does not have its own dedicated toilet facilities. It is therefore apparent that Queen's Hall is by no means even an equivalent replacement to the Prince's Hall, let alone a superior replacement (as the Trustee is attempting to suggest).
- (c) The current property representing the Charity assets has a distinct advantage in that it is a self-contained building (annexed to the wider town hall complex) with a separate entrance. The Prince's Hall is situated directly underneath the Victoria Hall. It would therefore be possible to easily manage the entire charitable property as a separate parcel if, hypothetically, the trustee of the Charity was no longer Ealing Council. The Queen's Hall however, as can be seen from the plans attached to the email from Browne Jacobson to you of 8 October 2018, is on the far end of the town hall complex and so the Charity's assets would become separated.
- (d) Our clients note that, currently, it is possible to hire the Victoria Hall and Prince's Hall together, which generates a higher income.
- (e) The current freehold interest would be replaced by an interest under a sub-lease.
- (f) We are not aware as to whether a valuation of the two Halls has as yet been obtained (or indeed of the Victoria Hall) so we do not see how the Charity Commission can fully evaluate the Trustee's request.
- (g) As noted, the Council's assertions that the hall swap is motivated by what is in the best interests of the Charity is undermined by the plans filed with the planning permission application on 24 January 2018 which make it clear that it has always been the intention that Mastcraft would convert the Prince's Hall as a hotel swimming pool and gym, yet it was not until months later that the Council first sought consent of the Charity Commission to the proposed hall swap.

4.4.6 The Trustee has argued in the recent paper to the General Purposes Committee that this swap would "enable" the Trustee to manage the hall as it would sit within a wider area also leased back to Ealing Council. It would however be highly impractical for trust property to be split up in this way as it would be separated by non-trust assets and indeed only accessible through non-trust assets. It would be impossible for a third party trustee to manage the Charity property in the future if it was split up in this way.

4.5 **Flawed public consultations**

4.5.1 We noted in our previous letter the flawed nature of the local consultation on the proposed scheme.

- 4.5.2 We understand that the Council received more than 275 submissions (some of which were submitted by community groups representing hundreds of individual members) in response to its consultation, which is a significant number and reflects the level of local concern.
- 4.5.3 An email from the Trustee's solicitors to the Charity Commission notes the number of responses and reports that responses fell into four categories: support for the scheme, opposition to amending the objects due to the specific wording of the new proposed objects, opposition to amending the objects due to concern that this was proposed solely to facilitate disposal of the Hall and no direct response on the objects but opposition to disposal of the property. Notwithstanding this, the solicitors state that "*although a large number of responses were received from the public, a significant percentage did not object to the change of charitable objects itself but to the proposed disposal of the charity's property*" and that "*the overall level of public response indicated that the public wished the charity to continue to operate and would not wish the charity to fail due to uncertain or unclear purposes*".
- 4.5.4 This is misleading:
- (a) As noted, the proposed new First Object (which provides for the provision of "a hall") would presumably allow the disposal of the Victoria Hall and its replacement with another hall. The change of objects and disposal are integrally intertwined.
 - (b) The disposal of the Victoria Hall is a change of purpose for which a cy-près scheme is required therefore the objections to disposal were directly relevant.
 - (c) The consultation document misled the public by suggesting that the current First Object is not recognised as charitable, which is incorrect.
 - (d) The consultation document suggested that the Trustee had already received consent from the Charity Commission to the proposed scheme, but we have seen from your correspondence with Brown Jacobson that this was not the case.
- 4.5.5 In any event, the solicitors' statements do not accurately reflect the nature of the public objections. The report to the General Purposes Committee dated 15th March 2018 notes that "*more than*" 275 representations were received which are summarised as being:
- (a) Objections to the disposal of the Town Hall,
 - (b) Objections to changing the Trust Objects.
 - (c) Desire for local people to be able to join the Trust Board.
 - (d) Further clarity on consultation needed.
 - (e) Desire to extend the consultation deadline.
 - (f) Request for an ACV to be set up and the building run by a community group.
 - (g) Victoria Hall should be able to fund the operation of the Trust in future.
 - (h) Development value is high and the Council should pay the value to the Trust.
 - (i) Comment that Council Trustees have been failing in their fiduciary duty.
 - (j) Concern about loss of Community Space.



- (k) The Trust is not being adequately compensated under the arrangements to dispose to Mastcraft.

4.5.6 This presents a fundamentally different picture to that presented to the Commission by the Trustee's solicitors and shows the high level of concern among the inhabitants of Ealing in relation to the proposals in relation to the Victoria Hall. These responses (which are further detailed in the Appendix to the report) suggest that in fact no responses received expressed positive support for the proposed scheme.

4.6 **The need to secure community use in line with the First Object**

4.6.1 The current use of the Charity's property is wide and varied, and of great public benefit. This includes bookings for community events (such as Ealing women's forum, a SEND exhibition, carol services); citizen engagement (election hustings, stakeholders meetings); and concerts and festivals, to name just a few examples.

4.6.2 We are mindful that the Charity Commission's guidance on Village Halls and Community Centres (RS9) provides that securing funding and financial security for a property cannot be at the expense of a charity's purposes and the ability for community activities to take place and that meeting the needs of users and beneficiaries should always be the driving force in the decision-making.

4.6.3 The Trustee appears to envisage that the Charity's purposes could be properly carried out by (a) entirely disposing of charitable property (as part of a larger commercial deal) to Mastcraft who will manage it and permit very limited "community use" of the Victoria Hall at certain times and rates largely of their choosing, but with all income to be retained by Mastcraft and with no long term security that this community use will be continued (b) the provision of the much smaller Queen's Hall.

4.6.4 These proposals do not secure community use in line with the Charity's First Object and are therefore not appropriate.

We have been encouraged by sight of your own correspondence with the Trustee, but remain very concerned at the Trustee's failure to discharge its duties or to rectify its historic mismanagement. We should be grateful for your confirmation that the Trustee will be obliged to restate the accounts and make good any funds misapplied.

Further, the Victoria Hall is an asset of the Ealing community and our clients believe that the Hall and associated charity property can and should be retained as Charity property for the public's continued use and benefit and that the case for a scheme which permits any change of use or disposal has not been made out. Our clients continue to take a close interest in the Trustee's proposals and are prepared to take all necessary steps to challenge any arrangements which do not appear to be in the best interests of the Charity and the preservation of the historic Victoria Hall complex, including in the Tribunal.

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

Yours faithfully

Bates Wells Braithwaite