



Notice of Meeting:

# Victoria Hall Trust Committee

**Meeting Location:**

Committee Room 5, ground floor, Perceval House, 14-16 Uxbridge Road, Ealing W5 2HL

**Date and Time:**

Thursday, 25 April 2024 at 7.00 pm

**Contact for Enquiries:**

**Email:** DemocraticServices@ealing.gov.uk

**Telephone:** 0208 825 6302

**Chief Executive:**

Tony Clements

**This meeting will be held in public. If you would like attend in person and have any special requirements in order to attend, please email or telephone at least three clear working days in advance wherever possible.**

## **Committee Membership: Councillors**

Y Johnson (Chair), T Mahmood, M Rice, G Shaw and A Zissimos

## **Independent Trustees:**

J Mathews, D Chaudhary and I Patterson

# AGENDA

**1 Apologies**

**2 Matters to be Considered in Private**

**3 Urgent Matters**

**4 Declarations of Interest**

**5 Minutes**

**(Pages 3 - 6)**

To approve as a correct record the public and restricted minutes of the meeting held on 21 November 2023.

**6 Victoria Hall Trust - update report\_April 2024**

**(Pages 7 - 36)**

**7 Date of Next Meeting**

The date of the next meeting will be 25 June 2024.

**Published:** Wednesday, 17 April 2024

## Minutes of the meeting of the Victoria Hall Trust Committee

**Date:** Tuesday, 21 November 2023

**Venue:** Committee Room 5, ground floor, Perceval House, 14-16 Uxbridge Road, Ealing, London W5 2HL

### **Attendees (in person):**

#### **Councillors:**

Y Johnson (Chair), T Mahmood, M Rice, G Shaw and A Zissimos

#### **Independent Members:**

D Chaudhary and I Patterson

### **Attendees (virtual):**

J Matthews (Independent Member)

### **Also present: Councillors**

Councillor G Malcolm, Leader of the Opposition

### **Also present: Officers**

Adam Whalley, Helen Harris, Keith Broomfield, Cornelia Harding

## **1 Apologies**

There were no apologies for absence. Ms Matthews attended virtually.

## **2 Matters to be Considered in Private**

Most of the discussion on item 6 was confidential pursuant to paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

## **3 Urgent Matters**

There were none.

## **4 Declarations of Interest**

There were none.

## **5 Minutes**

The minutes of the meeting held on 14 September 2023 were agreed by the committee as a true and correct record.

## 6 Victoria Hall Trust - update report\_November 2023

Council officers Adam Whalley and Helen Harris referred the committee to the first recommendation in the report which related to the Trust accounts.

Thereafter the rest of the meeting went into private session pursuant to paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information) and legal professional privilege).

Councillor Rice gave her apologies for lateness, arriving around 20 minutes into the meeting.

### **Resolved:**

That the committee:

- i. Notes that the 2022/23 Trust accounts have now been submitted to the Charity Commission, further to the Committee's approval of these accounts at the previous meeting of the Committee. Further notes the detailed breakdown of the 2022/23 accounts workings as attached at Appendix 1 (to the report) for information and as requested by the Committee at the previous meeting.
- ii. Notes that judgement has been given on the Appeal against the making of the Scheme by the Charity Commission. A copy of the judgement, dated 21 September 2023, was attached at Appendix 2 (to the report) and some of its key implications were summarised within the report and in confidential appendix 5 (to the report).
- iii. Notes that an application for further information and an extension to the appeal deadline has been lodged by the appellants. A copy of this application, dated 18 October 2023, was attached at Appendix 3.
- iv. Notes that at the request of the Tribunal, the Director of Legal and Democratic Services, acting as legal advisor to the Trust, has responded to the Appellants' letter. A copy of that submission dated 27 October 2023 on behalf of the Trust was attached at Appendix 4 (to the report).
- v. Authorises the Assistant Director Capital Investment Programme, following consultation with the Chair and the Director of Legal and Democratic Services, both officers acting on behalf of the Trust, to continue to work with the Charity Commission, the appellants, the corporate council, Mastcraft, and the Tribunal, to facilitate an early resolution of all outstanding issues, including negotiation and agreement of a new Scheme and negotiation and completion of any necessary amendments to the Mastcraft deal, insofar as these are required in order to secure the sustainable long term future of the Trust.

**7 Date of Next Meeting**

The committee noted that the next meeting was scheduled for 14 March 2024.

Meeting commenced: 7.00 pm

Meeting finished: 8.05 pm

Signed:

Dated: Thursday, 25 April 2024

Y Johnson (Chair)

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**Report for:  
ACTION AND INFORMATION**

<b>Contains Confidential or Exempt Information</b>	No
<b>Title</b>	<b>Victoria Hall Trust – update report</b>
<b>Responsible Officer(s)</b>	Adam Whalley, Assistant Director Capital Investment Programme Helen Harris, Director of Legal & Democratic Services
<b>Author(s)</b>	Adam Whalley and Helen Harris
<b>Portfolio(s)</b>	N/A
<b>For Consideration By</b>	The Victoria Hall Trust Committee acting as the Trustee of the Victoria Hall Trust
<b>Date to be Considered</b>	25 April 2024
<b>Implementation Date if Not Called In</b>	N/A
<b>Affected Wards</b>	Ealing Broadway
<b>Keywords/Index</b>	Victoria Hall, Ealing Town Hall, Victoria Hall Trust, redevelopment, Charity Commission

This report updates the committee with the latest position regarding a range of issues impacting on the Trust.

## 1. Recommendations

It is recommended that the Committee:

- 1.1 Notes that following the judgement of 21 September 2023, attached at Appendix 1 to this report, the Charity Commission has now published a revised Scheme for public consultation which responds to the judgement and takes into account earlier representations made by the Trust and the appellants. The revised Scheme is attached at Appendix 2 to this report.
- 1.2 Agrees that the Trust is not to make any representations on the revised Scheme on the basis that officers acting for the Trust have already commented on the Scheme in draft in line with the Committee’s previous authorisation as given at the VHT Committee meeting of 21 November 2023.
- 1.3 Notes that the appellants’ application to appeal against the First Tier Tribunal judgement of 21 September 2023 has been dismissed at a hearing of the Upper

Tier Tribunal which took place on 22 March 2024, having first been dismissed by the First Tier Tribunal.

- 1.4 Notes that the accounts of the Trust for the 2023/24 reporting period are due to be finalised and presented to the committee at a future meeting. However early review of these accounts indicates that the Trust's operating deficit over the period has increased by reason of continuing costs and the loss of income.
- 1.5 Notes that the chair and officers acting on behalf of the Trust met with the appellants on a without prejudice basis to discuss the potential options
- 1.6 Notes that Ealing Town Hall remains closed at this time on health and safety grounds and that as a consequence that the Trust continues to have no means of generating income while continuing to incur costs relating to the security and basic maintenance of its property
- 1.7 Notes that one of the appellants wrote to committee members close to the deadline for publication of this report, with suggestions for the future management and policy objectives of the Trust.

## **2. Purpose of this Report**

- 2.1 The Victoria Hall Trust (Charity number 1194739) was registered by the Charity Commission (CC) on 9 June 2021. The council is the sole Trustee of the Charity and has vested the duties and functions of the Charity with the Victoria Hall Trust Committee. This report provides an update to the committee on the legal challenge brought by two local residents (appellants) against the CC in relation to a Scheme made by the CC in March 2021.
- 2.2 Following an appeal lodged in April 2021, officers representing the Trust participated in the First Tier Tribunal hearing over 20 to 22 February 2023. Representations were made to the Tribunal on behalf of the Trust, the CC and the appellants. The appeal was made by the appellants and was against the decision taken by the CC to approve a Scheme in March 2021, which regularised the Trust's position and enabled the Mastcraft scheme to proceed. The Trust successfully applied to join the proceedings as second respondent, to ensure that the interests of the Trust were fully represented.
- 2.3 Further to the previous update given to the committee, the judgement (included at Appendix 1 to this report) was received from the First Tier Tribunal on 21 September 2023. As reported verbally at the last meeting of the VHT Committee, on 13 November 2023 the appellants made an application to the First Tier Tribunal for permission to appeal the judgement. On 30 November 2023, the First Tier Tribunal issued a decision confirming that it would not grant permission to appeal.
- 2.4 On 19 December 2023, the appellants made an application for permission to appeal to the Upper Tier Tribunal, which is the more senior Tribunal. A hearing took place on 22 March 2024, at which the Upper Tier Tribunal judge confirmed verbally that he would not grant the appellants permission to appeal, although he



has yet to issue his written decision. This represents the end of any opportunity to appeal the judgement of 21 September 2023.

2.5 The Committee is reminded that the judgement of 21 September 2023 (As included at appendix 1), arrived at independently by a panel of three judges following an extremely involved process initiated by the appellants, confirms that:

- The Mastcraft transaction, including the proposed land swap arrangement, is the only option available to the council acting in both roles of corporate council and sole-trustee, and the viability of that is irretrievably tied to the Trust property. (Para 46)
- A cy-pres occasion has arisen. (Paras 28, 46, and 58)
- Defining the boundaries of charity property is not required for the council to be satisfied that the proposed transaction with Mastcraft protects the Trust's interests. (Para 48)
- Failings as to how the Trust was historically operated by the council are not to be addressed in a new Scheme. (Para 41)
- The Trust is not self-sustaining. (Para 32) and could not operate on a stand-alone basis (para. 46)
- The original purposes of the Trust, in whole or in part, could not today be carried out, or not carried out in accordance with the directions given and to the spirit of the gift in the Declaration of Trust declared on 6 December 1893 (Para 29). The change proposed by the CC to the Trust's purpose in the March 2021 Scheme was appropriate. (Para 42)
- Preservation of Trust property is not a charitable purpose. The underlying charitable purpose was not to provide income for 'preserving' charity property but to apply income from the Charity property for the beneficiaries of the Charity. (Paras 33 and 34)

2.6 These are all matters which have been in dispute historically and the judgement found in favour of the position argued by the Trust in relation to each of these points. The judgement provides clarity on the above matters and a basis on which to move forward.

2.7 The excessive delays that have resulted as a direct consequence of the appellants' legal challenge and earlier extensive correspondence with the CC, mean that Ealing Town Hall has now closed, the Trust has lost its only source of income, and the Trust continues to be thwarted in its efforts to secure its stable and sustainable long-term future. This is hugely damaging to the Trust. The priority of officers acting for and at the direction of the Trust continues to be to achieve an early resolution, so as to put an end to the uncertainty and delay and secure the long term advantageous and sustainable future of the Trust.

2.8 In December, and at the direction of the Trust, the chair and officers acting for the Trust met with the appellants on a confidential and without prejudice basis, to discuss possible options and resolutions.

### **3. Current position**

3.1 Following delivery of the Upper Tier Tribunal decision to not grant permission to appeal the judgement of 21 September 2023, the Charity Commission (CC) has produced a new draft Scheme. This has been published for public comment and a copy of the new draft Scheme is attached at Appendix 2 to this report.

3.2 The new draft Scheme is very similar to the version produced by the CC in March 2021 which was the subject of the appellants' legal challenge and which, under the judgement of 21 September 2023, was quashed remitted back to the CC to be revised. That's because the previous Scheme was produced by the CC following a lengthy consultation process which allowed for comments on behalf of the Trust and the appellants. However, some important provisions which differ between the earlier Scheme and the new Scheme being consulted on are:

- a. The Scheme now confirms that a cy-pres occasion has arisen and that the Mastcraft deal may be completed.
- b. The Mastcraft deal must be completed within six months of the date of the new Scheme, provided that the trustees are satisfied that the terms of the agreement are in the best interests of the Trust.
- c. During the period before the leases with Mastcraft are completed, the trustee committee is to comprise three councillors and five independent members.
- d. A different trustee model will apply once the Mastcraft deal is fully implemented.
- e. There are clearer provisions regarding trustee conflicts of interest.
- f. Quorum rules have been tightened for trust meetings.
- g. There are more precise provisions regarding income from the use of trust property.
- h. The leases must clearly define the boundaries of the trust property.
- i. The leases must make provision for access to the trust property through the Town Hall.

3.3 The closing date for representations to the CC on the proposed new Scheme is 28 April 2024. Once public consultation is complete, it is the CC's intention, in accordance with the CC's decision review procedure, to appoint an independent officer to review all the representations received during the public consultation stage, to decide whether further amendments are necessary, and thereafter to issue the new scheme.

3.4 The CC has confirmed that there is no requirement to refer the draft scheme back to the First Tier Tribunal as the matter was remitted back to the CC for the CC to make the new scheme. Once the new Scheme is formally issued, it would potentially be possible for any interested party to bring a formal legal challenge against it. Any such challenge would again fall to be determined by the First Tier Tribunal. However, it can be anticipated that the Tribunal would give very short shrift to any attempt to reopen issues already determined by the judgement of

September 2023, particularly noting that an application for permission to appeal that decision was recently dismissed by both the First Tier Tribunal and the Upper Tier Tribunal.

#### **4. Financial Considerations**

- 4.1 Accounts for 2022/23 covering the period 1<sup>st</sup> June 2022 to 31<sup>st</sup> March 2023 were approved by the Committee in September 2023. Accounts for 2023/24 will be brought to the Committee for approval at a future meeting, however early review of these accounts indicates that the Trust's operating deficit over the period up to 31<sup>st</sup> March 2024 has increased significantly.
- 4.2 Officers for the Trust continue to probe and challenge all costs. Previous accounts have been independently examined and submitted to the CC in line with CC requirements. It should be noted that this level of debt is unsustainable; the Trust is now more dependent than ever on the financial support of the corporate council, which cannot be guaranteed in the longer term. If a viable way forward cannot be secured in the near future, the Trustee may be forced to consider whether the Trust can continue to exist. This background gives added urgency and impetus to the ongoing work.
- 4.3 As noted in previous committee meetings, Ealing Town Hall has now closed on health and safety grounds and the Trust property, which sits within the wider Town Hall building, is not presently safe for use. This continues to have a hugely negative impact on the Trust's financial position, as the Trust has lost its only source of income while continuing to be responsible for the ongoing costs of keeping its property secure and structurally sound.

#### **5. Legal Considerations**

- 5.1 Members of the Victoria Hall Trust Committee ("Trustee") are making decisions as Trustee of the Victoria Hall Trust and are therefore bound by charity law to act in the best interests of the charity and its beneficiaries both generally and with regard to the particular decisions it makes under this report. In making the decisions, the Trustee should have due regard to relevant guidance and advice issued by the CC but not limited to, the CC guidance on the [roles and responsibilities of trustees \(CC3\)](#), [guidance on local authorities acting as trustees](#), [guidance on changing the charity's objects](#), [guidance on the disposal of charitable property \(CC28\)](#) and [guidance on identifying and managing conflicts of interest \(CC29\)](#). The CC has also, jointly with the LGA, produced [a useful guide](#) for councillors on a council's role as charity trustee.
- 5.2 When considering the recommendations of this report, all members of the Trust committee are under a duty to consider the duties set out in the following paragraphs.

#### **The historic position**

- 5.3 The Trustee is aware that the current status quo regarding the maintenance of the Trust Property by the corporate council using public funds cannot continue

due to the many other competing demands on the resources of the corporate council. The Trustee is legally required therefore to find a solution that will ensure that the public continue to benefit from the charity. The latest accounts confirm that the historic net deficit position of the Trust is worsening and the judgement confirmed that the charity could not be self-sustaining.

### **Manage your charity's resources responsibly**

- 5.4 The Trustee, as sole charity trustee, is required to manage the assets of the charity in a reasonably prudent manner and to protect them for the benefit of the beneficiaries of the charity. The Trustee is aware that the council has made clear that the current arrangement regarding the ongoing maintenance of the Trust Property being significantly subsidised by council funds cannot continue indefinitely and nor can a loan facility. The Trustee will also be aware that closure of the Town Hall has greatly exacerbated the Trust's financial challenges. The Mastcraft deal, through which the charity's assets will be maintained and protected long-term whilst still being available to the beneficiaries of the charity to use in accordance with the charity's charitable objects, is designed to address that challenge. Because of this, it has up until this point been considered reasonable for the Trust to continue to operate for the time being, despite the accounts showing a deficit. However, that position may change if the corporate council decides to withdraw its financial support from the Trust or if something else happens to increase significantly the time period until the trust property is likely to reopen. CC advice can be found at [this link](#). It should be noted that the Trust's participation in the various Tribunal proceedings was designed to maximise the chances of the Mastcraft deal being able to proceed as early as possible and thus to secure the sustainable future of the Trust.

### **Ensure the charity is accountable**

- 5.5 The Trustee approved the approach for the draft accounts for the Trust at its meetings of [16<sup>th</sup> April 2019](#) and [28<sup>th</sup> January 2021](#), acting at that time as the General Purposes Committee. The Victoria Hall Trust Committee has subsequently approved the first formal accounts at the meeting of [8 February 2023](#) which have subsequently been submitted to the CC following independent examination.

### **Conflict of Interest**

- 5.6 There is potential for a conflict of interest (or perception thereof) regarding the Council's dual role as a local authority and trustee of the Trust, and this has already been recognised by both the council and Trustee. The CC has drafted further provisions into the draft replacement Scheme (appendix 2). The Committee should, as always in considering this report, reach an independent judgement as Trustee, and consider and decide whether it feels it has received sufficiently independent advice necessary to inform its decision-making.
- 5.7 The CC has produced [Conflicts of Interest: a guide for charity trustees](#). The guidance recommends that trustees take the following steps:
1. Identify conflicts of interest.

2. Prevent the conflict of interest from affecting the decision.
3. Record conflicts of interest.

[Further Charity Commission Guidance](#) on Managing Conflicts of Interest in a Charity recommends that trustees:

4. Declare conflicts of interest, early and before discussions or decisions happen.
5. Consider removing conflicts of interest. If trustees decide they do not need to remove the conflict, they must prevent it from affecting their decision in a different way.
6. Manage conflicts of interest. Trustees must not allow an individual trustee, or an organisation or people connected to them, to benefit from the charity, unless it's allowed by either the charity's governing document, by the law, or by the CC or the court.
7. Keep a record of conflicts of interest, including what it was, who it affected, when it was declared, and how it was managed.

## 6. Appendices

- Appendix 1 – First Tier Tribunal judgement of 21 September 2023
- Appendix 2 – Draft revised Scheme

## 7. Background Information

- Full council reports 19 December 2017 and 2 March 2021
- General Purposes Committee reports – 15 March 2018, 15 January 2019, 16 April 2019, 26 September 2019, 29 June 2020, 30 July 2020, 9 December 2020, 28 January 2021, 16 February 2021
- Victoria Hall Trust Committee reports – 26 May 2021, 15 September 2021, 23 February 2022, 26 September 2022, 8 February 2023, 14 September 2023
- Cabinet reports 21 October 2014, 12 July 2016, 12 February 2019 and 17 September 2019
- Charity Commission Guidance including [CC3](#), [CC28](#) and [CC29](#)
- <https://www.gov.uk/government/organisations/charity-commission/about/publication-scheme>
- Charity Commission guidance: [Conflicts of Interest: a guide for charity trustees](#)
- Charity Commission [Guidance on Managing conflicts of interest in a charity](#)
- [Local Government Association and Charity Commission: Councillors' guide to a council's role as charity trustee](#)

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

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Case Reference: CA/2021/0009

First-tier Tribunal  
(General Regulatory Chamber)  
Charities

Heard in public in London on 20, 21 and 22 February 2023

Decision given on: 21 September 2023

Before

DAMIEN MCMAHON  
TRIBUNAL JUDGE

MANU DUGGAL  
TRIBUNAL MEMBER

STUART REYNOLDS  
TRIBUNAL MEMBER

Between

TONY MILLER

and

WILL FRENCH

Appellants

-and-

THE CHARITY COMMISSION FOR ENGLAND AND WALES

and

THE LONDON BOROUGH OF EALING

Respondents

Representation:

For the Appellants:

Mr. T. Loveday, of counsel, instructed by Bates Wells, Solicitors.

appeared for the Second Respondent.

For the First Respondent:

Ms. S. Adelbi, of counsel, instructed by the First Respondent.

For the Second Respondent: Mr. J. Winfield, of counsel, instructed by the Second Respondent.

Decision:

The appeal is allowed in part.

A *cy près* occasion had arisen and the relevant statutory criteria, pursuant to ss. 61-68 of the Charities Act 2011 ('the Act'), were satisfied.

While it is appropriate to make a Scheme of Arrangement ('the Scheme') in respect of the property of Victoria Hall Trust ('the Charity') (being the first floor of the property known as Victoria Hall but including the Prince's Hall at basement level), pursuant to ss. 69-75 of the Act, the terms of the Scheme, as made by the First Respondent on 12 March 2021 are not accepted as being the most appropriate terms. The Tribunal, rather than itself making a new Scheme, directs the First Respondent, in consultation with the Appellants and the Second Respondent, to re-visit the Scheme and prepare a new Scheme, taking account of the findings of the Tribunal in this Decision within 185 days of the date of this Decision.

Upon the making of a new Scheme which takes into account the Tribunal's findings, the parties shall confirm that they are in agreement or otherwise. The parties are directed to keep the Tribunal advised and updated, in a timely fashion, as to any developments in that regard.

Should agreement between the parties on a new Scheme not be reached, the First Respondent is directed to make a new Scheme that, in its view, takes account of the findings of the Tribunal, whereupon, a new right of appeal, this time against the terms of the new Scheme, will arise at the instance of any party with the necessary *locus standi* subject to the time limits for bringing an appeal set out in the Act.



## REASONS

### Background

1. On 6 December 1893, the property of the Trust was placed in trust for the purpose of meetings, entertainments and other activities listed in the Trust document with any profit generated by use for such purposes to be applied, after deduction of expenses, to any charities in the district of the then Ealing Local Board (the predecessor in title to the Second Respondent).
2. The Respondents ultimately considered that the Charity was no longer sustainable and had not been for a number of years. This was disputed by the Appellants. The First Respondent decided that a *cy-près* occasion had arisen and authorised the Scheme dated 12 March 2021, pursuant to an Order made under s. 69 of the Act.
3. The Tribunal considered these matters entirely afresh, taking into account evidence not available to the First Respondent, pursuant to s. 319(4) of the Act, while giving what it considered appropriate weight to the decision of the First Respondent, the decision under appeal, and its reasons for making the Scheme. The Tribunal did not, in determining this appeal, merely review the decision-making of the First Respondent.
4. The Second Respondent is the sole trustee of the Charity. However, it did not recognise, for many years, that the property of the Charity was held on a charitable trust and the management of the property of the Charity became subsumed with the management of the Town Hall property of the Second Respondent, located on the same lands. This, regrettably, resulted in separate accounts not being kept by the Second Respondent in respect of the Charity (as should have been done) until the 2018-19 financial year. Secondly, the Second Respondent had been paying, as a local authority rather than as the sole trustee of the Charity, for the upkeep and maintenance of the property of the Charity, as well as accepting, in the same capacity, receipts for its use. Finally, the property of the Charity was included in the plans of the Second Respondent, again in its capacity as a local authority, to dispose of the Town Hall. A tender exercise was undertaken resulting in an agreement being entered into with a developer known as Mastcraft.
5. The Scheme, that is complex, authorises the property of the Charity to be leased to Surejogi, the company established by Mastcraft to redevelop the Second Respondent's Town Hall, for 250 years, allowing for an up-front premium to be paid to and received by the Charity (after deduction of transactions costs) and subject to a Community Use protocol, with the repair and maintenance obligations for the property of the Charity to be the responsibility of Surejogi. The income from the community hiring of the Victoria Hall, part of the property

of the Charity, will go to Surejogi, while income from community hiring of other premises, known as the Queen's Hall, will go to the Charity, of which the Second Respondent is the sole trustee. The reasoning behind this arrangement was set out in the written and oral submissions of the Second Respondent.

6. The Scheme provides that the Second Respondent, as the sole trustee of the Charity, will be the tenant in possession of Victoria Hall and Queens Hall, two halls within the Town Hall complex, as allowed under the Scheme, by way of an under-lease and sub-under-lease of the same duration or Term as the head-lease to Surejogi of the whole Town Hall complex, which includes the current Trust Property. The Second Respondent, as the sole trustee of the Charity, will effectively have control of the Victoria and Queens Halls. A user covenant, in addition to the Community Use Protocol in the head-lease is a requirement of the Scheme.
7. The Appellants are entitled to bring this appeal, pursuant to s. 319 and Schedule 6 of the Act, as persons affected by the making of the Scheme.
8. This appeal was the subject of a number of Directions in order to narrow the issues and address various procedural issues that had arisen.
9. The Appellants were unrepresented until the substantive hearing.
10. There was considerable public interest in this matter among residents of the London Borough of Ealing and a number of interest groups, namely, the Ealing Performance & Arts Centre; Ealing Voice and The Friends of Victoria Hall, the last being a voluntary unincorporated association established to secure the preservation and protection of Victoria Hall, and its associated spaces, for the benefit of the local community (presumably meaning the residents of the London Borough of Ealing ('Ealing')). The Appellants are residents of Ealing and members of the said various interest groups.

### Legal Issues

11. (1) Whether a *cy-près* occasion had arisen in respect of the property of the Trust – a pre-requisite for the making of a Scheme by the First Respondent – to amend the purposes of the Charity.  
  
(2) If so, whether the Order dated 12 March 2021 ('the Order') made by the First Respondent, pursuant to sections 67 and 69 of the Charities Act 2011 ('the Act') making a Scheme, on the application of the Second Respondent, and the terms thereof, were appropriate.
12. These are the sole legal issues that fell for determination by the Tribunal in this appeal.

13. The burden of proof, on the balance of probabilities standard, lay on the Appellants.

### Appellants

#### Cy-près Issue

14. The Appellants submitted that the conditions, both statutory (section 62(1) of the Act), and in policy Guidance issued by the First Respondent, to apply a property *cy-près* were not met for the reasons set out in their written and oral submissions.

#### Whether the Scheme was appropriate.

15. This question was framed in a somewhat different way by the Appellants, namely, that, for the reasons set out in their written and oral submissions, the Scheme failed to have proper regard to the relevant matters set out in section 67(3) of the Act and was not in the best interests of the Charity's original charitable purposes, even if a *cy-près* occasion had arisen.
16. The Appellants submitted that if the Tribunal found in their favour in respect of one or both of the legal issues set out in section 67(3) of the Act, that it either quash the Order or remit the matter to the First Respondent with directions. The Appellants further invited the Tribunal, in those circumstances, to rule on the extent of the property of the Charity and direct its registration in the freehold ownership of the Charity with particular reference to the Charity having freedom of access across and through the property of the Second Respondent.

### First Respondent

#### Cy-près Issue

#### Whether the Scheme was appropriate

17. The First Respondent, in its written and oral submissions, maintained that a *cy-près* occasion had arisen and that the terms of the Scheme made on 12 March 2021, pursuant to sections 67 and 69 of the Act, taking account of some revisions to the draft of the Scheme, following a review of the original decision of the First Respondent by one of its senior case officers, Mr. Neil Robertson, were appropriate.
18. The First Respondent submitted that the only powers available to the Tribunal, pursuant to Column 3 of Schedule 6 of the Act, in determining this appeal, were to
  - quash the Order in whole or in part and, if appropriate, remit the matter to the First Respondent; or,
  - substitute for all or part of the Order any other Order that could have been made by the First Respondent; or,

- add to the Order anything that could have been contained in an Order made by the First Respondent.
- 19. The First Respondent submitted that the way in which the 'appropriateness' issue was framed by the Appellants was an incorrect statement of the legal test.
- 20. The First Respondent also submitted that the terms of the Scheme would ensure that the property of the Charity would retain a level of social use to comply with the amended purposes of the Charity while ensuring that such property could continue to be used for charitable purposes and allow the Charity to be financially viable.
- 21. The First Respondent rejected the alternative proposal of the Appellants that the Charity could operate without the assistance of the Second Respondent as it was highly unlikely that the Charity would be financially viable in the case proposed by the Appellants.

#### Second Respondent

- 22. The Second Respondent, as trustee, in its written and oral submissions, confirmed that Ealing Borough Council wished to dispose of the 'Town Hall complex' as it was uneconomic to retain it.
- 23. The Second Respondent accepted that part of the Town Hall complex is the property of the Charity, namely the hall known as the Victoria Hall and the hall known as the Prince's Hall (at basement level).
- 24. The Second Respondent is the sole trustee of the Charity.

#### Cy-près Issue

- 25. The Second Respondent, in its written and oral submissions maintained that a *cy-près* occasion, pursuant to section 67 of the Act, had arisen, the key issue being that the Charity was not, and could not be, as things stood, financially self-sustaining. Moreover, that it had no financial reserves to draw upon.

#### Whether the Scheme was appropriate

- 26. The Second Respondent submitted in its written and oral submissions that proper regard was had by the First Respondent as to whether the Scheme and its terms, as revised, were appropriate, pursuant to section 67 of the Act, with particular reference to the provisions of section 67(3)(c) – the need for the Charity to have purposes which are suitable and effective in the light of *current* social and economic circumstances.

27. It was further submitted that the preservation of the existing property of the Charity was not a current object of the Charity – that would, in any event, be a rare object.

### Reasoning

#### Cy-près Issue

28. The Tribunal was satisfied, on the balance of probabilities, that the Appellants had not discharged the burden of proof upon them that a cy-près occasion, pursuant to the provisions of section 62 of the Act, had not arisen.
29. The Tribunal was satisfied, weighing up all the matters set out in sections 62 and 67 of the Act, and having regard to the circumstances, that the original purposes of the trust, in whole or in part, could not today be carried out, or not carried out in accordance with the directions given and to the spirit of the gift in the Declaration of Trust declared on 6 December 1893. The original purposes had also ceased to provide a suitable and effective method of using the property of the Charity available by virtue of the Declaration of the said trust. While recognising that a large matter of civic pride was bound up in a significant commercial issue, the Tribunal accepted the submissions of the Respondents, in particular the submissions of the First Respondent, in this regard.
30. The Tribunal was satisfied that the First Respondent had properly applied its operational guidance entitled 'Application of Property Cy-près' and other policy guidance (albeit the Tribunal determined this appeal *de novo*) when addressing the cy-près' issue.
31. The Tribunal found that the essential submissions of the Appellants revolved around the appropriateness of the proposed Scheme and not, primarily, whether or not a cy-près occasion had arisen.
32. The Trust was simply not self-sustaining on the facts. The concept of the spirit of the original gift, as set out in section 67(3) of the Act, and the other matters set out in that provision, was simply no longer achievable. Accordingly, it was entirely proper, and permissible, that the First Respondent should make a Scheme with the statutory objective set out in section 67(3) of the Act, to apply the property of the Charity for charitable purposes that were, desirably, close to the original purpose, that were suitable and effective in the light of *current* social and economic circumstances. Legal authority requires appropriate weight to be given to the decision of the First Respondent to make a Scheme if satisfied that a cy-près occasion had arisen (albeit this is not an immutable proposition).
33. While the issue of 'preservation' as an original purpose of the Charity was pleaded by the Appellants, it emerged at the hearing that the Appellant's argument had shifted to the concept of the 'spirit' of the gift. The Tribunal found

that 'preservation' was neither mentioned in the Charity's governing document, nor part of the spirit of the gift.

34. The underlying charitable purpose was not to provide income for 'preserving' charity property but to apply income from the Charity property for the beneficiaries of the Charity.
35. The purpose of the Charity, as originally envisaged, was no longer sustainable on the basis that it had no endowments, nor was there any prospect that any endowments would ever be in place. Further, the Charity was not generating a surplus.
36. The Appellants suggested that the Charity could be sustained by the Second Respondent (albeit the Second Respondent was the sole trustee of the Charity). This, in itself, was a firm indicator that the Charity could not be self-sustaining and therefore that a cy-près occasion had arisen. Furthermore, the Tribunal accepted evidence presented during the hearing from witnesses that confirmed the Charity was currently not self-sustaining and had not been for many years.
37. A further fact, found by the Tribunal, in deciding whether a cy-près occasion had arisen, was that the Charity could not operate / manage its Property (the exact extent of which was in dispute but the answer to which was not determinative and which was not a matter to be ruled upon by the Tribunal), other than by accessing it through the property of the Second Respondent.
38. The Tribunal accepted that this was a somewhat unusual cy-près occasion in that the property of the Charity under the proposed Scheme would still be offered for use by the public, the original beneficiary class, subject to a necessary modernisation of approach, but with a significant material difference, namely, the proposed property swap arrangement between the Charity and the Second Respondent as set out in the proposed Scheme.

#### Appropriateness of Scheme

39. The Tribunal found that the current Scheme made by way of the Order dated 12 March 2021 was not the most appropriate and has decided to remit the matter to the First Respondent for it to make a new Scheme. This section sets out the findings of the Tribunal with regard to appropriateness of any Scheme.
40. Although after remittal the terms of the new Scheme are exclusively a matter for the First Respondent, it should take the Tribunal's findings into account. The First Respondent is reminded that in preparing the new Scheme, this decision requires it to consult with the other parties and keep the Tribunal updated as to whether agreement can be reached.

41. In issuing these findings, the Tribunal notes that certain failings as to how the Charity was previously operated by the Second Respondent as Trustee are not directly addressable in the making of the new Scheme and so not necessary to be mentioned here. Many are matters to do with historical failures (which cannot now be remedied), others to do with implementation of any Scheme (a matter for the Trustee) and some covered by duties owed to the Charity by the Trustee (covered by charity law).
42. For the avoidance of doubt, the Tribunal accepted the change proposed by the First Respondent to the purposes as being appropriate. However, some of the other terms of the Scheme being appealed were deemed inadequate because they did not protect the interests of the Charity, even allowing for the unusual and complex nature of the property transactions leading to this appeal.
43. It was accepted by all parties that historically there had been failures in governance and independence of the Charity Trustee; the Second Respondent was a Council operating and sharing use of parts of Charity property and, on the other hand, allowing access through its own property while acting as Trustee. The Tribunal notes that although the issue of bias and independence loomed large when looking at how the Charity had made decisions historically, if the Mastcraft transaction proceeds, the role of the Trustee will change.
44. It is essential to properly consider and, to the extent possible, manage any actual, or perceived, conflict of interest between the Charity and Ealing Borough Council, as owner of the Town Hall, in respect of the property of the Charity. Therefore, the new Scheme must recognise the division, and need for independence, between the Second Respondent as the local authority and as the Charity trustee in taking decisions affecting the Charity, on a forward looking basis. Although setting up the advisory committee seems to be a good step to take to address the above issues, the parties will need to put their minds to agreeing this matter in the preparation of the new Scheme. In particular the way that independent members are selected, and the influence and power they have, in a practical sense, to ensure the Charity's assets are protected.
45. The Second Respondent submitted that the test of the appropriateness of the Scheme is whether the Mastcraft transaction is the 'best available deal'. The Tribunal found that the proper test is whether the transaction with Mastcraft / Surejogi, taken as a whole, on the assumption that it is the only offer available in respect of the Town Hall complex, should be permissible. This must take into account current circumstances, market conditions and the outlook for use of Charity property in meeting its purposes going forward absent the proposed lease transactions.

46. The Tribunal accepted the Second Respondent's submissions that the transaction with Mastcraft / Surejogi was the only option available to the Second Respondent (acting as a local authority) in disposing of its land interests and that the viability of this is irretrievably tied to Charity property. Equally that the Charity could no longer operate on a stand-alone basis. Therefore, there can be no basis, at this remove, but to endorse the transaction, including the proposed land swap arrangement, otherwise, no agreement could realistically be achieved to respond to the cy-près occasion that had arisen, the Respondents' submissions on this point having been accepted by the Tribunal.
47. Notwithstanding this, the new Scheme must show adequate regard for the Charity's property and beneficiaries. In order to achieve this to the fullest extent possible, the Second Respondent (as Trustee) must, from a governance perspective, recognise this, and act only in the best interests of the Charity, when agreeing to the terms and conditions finalised with Mastcraft / Surejogi (or another).
48. Any Scheme, once it becomes operative, will effectively define boundaries between property intended to be available for use by the Charity and that available exclusively to Mastcraft for centuries to come. Defining the boundaries of Charity property raised in the course of this appeal, is neither something within the jurisdiction of the Tribunal (nor the First Respondent) to determine under this appeal or generally, nor necessarily required for the Second Respondent to be satisfied that the proposed transaction with Mastcraft protects the Charity's interests.
49. The Second Respondent, through its surveyor Sanderson Weatherall, provided an estimate of the square footage (area) of Charity property, to be used as a basis of apportionment of the income to be received from Mastcraft. Any new Scheme must ensure that the process for agreeing apportionment of the income to be received by the Charity under the Mastcraft transaction, protects the Charity's interests by way of arms-length scrutiny by or on behalf of the Charity trustee. As such, this issue is bound up with the governance and decision making at the Charity and ought to be dealt with by the parties when aiming to agree the new Scheme.
50. The disposal of the Town Hall Complex, which requires a Scheme, was driven by the decisions and preferences of the Second Respondent acting as the local authority. Whilst it is noted that a cy-près occasion has arisen, the Tribunal expects the Second Respondent, as the local authority, to be responsible for all transactions costs of any arrangement affecting Charity property: there should be no cost apportionment burden on the Charity arising from the Mastcraft / Surejogi (or other) transaction.



51. The Scheme (Community Use Protocol, which forms part of the lease transaction with Mastcraft / Surejogi), currently grants free use to Ealing Borough Council, a statutory entity and not within the beneficiary class. This, the Tribunal feels, is not appropriate. There should be no rent-free concession to the Second Respondent to use the property of the Charity. Any use should be at commercial rates and paid over to the Charity. Any subsidy or support Ealing Borough Council may have given to the Charity in the past, although undoubtedly helpful to the Charity, is trumped by the need to adhere to the revised purposes which do not, in themselves, allow this.
52. The Scheme envisages community users being charged 'reasonable and affordable' rates which are set for 10 years. This seems to the Tribunal to be a very long period to set between reviews. The Tribunal is concerned that this may result in a situation where the proposed pricing (for 10 years) is such that community users are either priced out of the market, allowing commercial users to dominate use of Charity Property (albeit the Charity will receive income), or little use is made of the Halls by community users. The parties may wish to put their minds to revisit issues such as these, although it is for the First Respondent to decide if, and how, any amendments to the current Scheme are incorporated into the new Scheme.
53. There are, and will be, divergent interests in the property of the Charity: Mastcraft / Surejogi have very different interests to those of the Charity which could cause detriment to the Charity. To the extent that the terms of the new Scheme can affect this issue, it is an area where all parties need to collaborate to ensure that the Charity does not face any avoidable harm. Other matters which the Tribunal felt required attention in the new Scheme include:
54. The Tribunal was concerned that the Community Use Protocol in the Scheme had not yet been agreed. The revised Scheme should ideally include an agreed version as it is central to the issue of achieving the Charity's purposes. This must have due regard to the resources – cash and liquidity in particular - of the Charity to avoid there being any legacy management burden on the Charity in circumstances where the Charity has no resources of its own.
55. The Scheme creates a proposed structure for the Advisory Group. However, the detail of this, or any alternative governance structure, needs to be finalised in the new Scheme noting that it should provide an independent perspective so as to benefit and protect the Charity and its property.
56. The Scheme needs to achieve clarity as to how income from use of charity property (as redefined by the Mastcraft / Surejogi transaction) intended to be paid to the Charity is collected and paid over to the Charity. It should make clear what deductions are allowed, if any, and when it is to be paid to the Charity.

57. The Scheme should include a provision for an alternative trustee(s) of the Charity.

Conclusion

58. A cy-près occasion had arisen thereby enabling, or obliging, the First Respondent to make a Scheme to allow the Charity to continue in existence for charitable purposes.

59. The Tribunal is not satisfied that the terms of the proposed Scheme adequately protects the interests of the Charity and directs that a revised Scheme is drawn up between the two Respondents in consultation with the Appellants, within 185 days of the date of this Decision.

Note: A right of appeal, on a point of law only, lies to the Upper Tribunal against this decision. Any person seeking permission to appeal must make application in writing to this Tribunal for permission to appeal no later than 28 days after this decision is issued, identifying the alleged error of law and state the result the person making the application is seeking.

Signed: *Damien McMahon*  
Tribunal Judge

Date: 20 September 2023

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

Under the power given in the Charities Act 2011

Orders that from today, the

this

**SCHEME**

will govern the charity

known as

**THE VICTORIA HALL TRUST**

at

Ealing, London

DRAFT

**A member of staff of the Charity Commission authorised to act on behalf of the  
Charity Commission**

## PREAMBLE

- (i) The Trust Deed of 6 November 1893 ('the former trusts') transferred a public hall known as the Victoria Hall to members of the Local Board for the District of Ealing to hold on trust. The former trusts provide that Victoria Hall ('the Victoria Hall') was to be let and the income to be applied to such 'Charities or Philanthropic or Charitable Institutions in the District of the Local Board of Ealing as the trustees may think fit.' A description of the Victoria Hall is given at Part 1 of the Schedule to this scheme.
- (ii) The London Borough of Ealing is the trustee ('the Existing Trustee') for the Victoria Hall Trust ('the Charity').
- (iii) The property of Victoria Hall Trust (being the first floor of the property known as Victoria Hall but including the Prince's Hall at basement level) is part of the Town Hall complex. The Town Hall consists of all the land and buildings at Ealing Town Hall New Broadway Ealing London W5 2BY registered at HM Land Registry with title number AGL135666
- (iv) The Existing Trustee considered that a cy pres occasion had arisen pursuant to s.62 of the Charities Act 2011 ('the 2011 Act'). In accordance with the statutory duty in section 61 of the 2011 Act, the Existing Trustee applied to the Charity Commission for England and Wales ('the Commission') for a scheme to apply the Charity's property cy pres.
- (v) The Existing Trustee wished to dispose of the Town Hall (which includes the Victoria Hall) and sought a scheme for the property of the Charity to be leased to Surejogi, the company established by Mastcraft to redevelop the Second Respondent's Town Hall, for 250 years, allowing for an up-front premium to be paid to and received by the Charity (after deduction of transactions costs) and subject to a Community Use protocol, with the repair and maintenance obligations for the property of the Charity to be the responsibility of Surejogi. The income from the community hiring of the Victoria Hall, part of the property of the Charity, will go to Surejogi, while income from community hiring of other premises, known as the Queen's Hall, will go to the Charity and the Existing Trustee of the Charity will be the tenant in possession of Victoria Hall and Queens Hall, two halls within the Town Hall complex by way of an under-lease and sub-under-lease of the same duration or Term as the headlease to Surejogi of the whole Town Hall complex, which includes the current Trust Property.
- (vi) The Commission was satisfied that a cy pres occasion had arisen and the proposed application of the property was in the best interests of the Charity. The Commission scheme was made on [x] ('the First Scheme').
- (vii) The First Scheme was challenged in the First Tier Tribunal (General Regulatory Chamber) by persons with an interest in the Charity. In a judgment dated 21 September 2023, the Tribunal upheld that a cy pres occasion had arisen, and that the First Scheme provided an appropriate application of property cy pres. However, the Tribunal had concerns about the ability of the Existing Trustee to act solely in the best interests of the Charity. The Tribunal directed the Commission to re-visit the First Scheme and prepare a new scheme, taking account of the findings of the Tribunal.
- (viii) This scheme, made in consultation with the persons interested and the Existing Trustee, and is made in accordance with the directions of the Tribunal.

## **SCHEME**

### **1. Additional Definitions:**

In this scheme:

“the Beneficiaries” means the inhabitants of Ealing and the surrounding area.

‘the Council’ means the London Borough of Ealing acting in its capacity as a local authority

“designated land” means land held on trusts which stipulate that it must be used for the purposes of the charity

‘Independent Trustees’ means individuals who are not members or employees and are not connected with members or employees of the Council.

‘the Leases’ means the together the head lease, under lease and sub lease described in Part 2 of the schedule to this scheme.

‘local authority’ means as defined in the Local Government Act 1972

“Mastcraft” means Mastcraft Limited (company number 01845796) whose registered address is at 30 Poland Street, London, W1F 8QS.

“premium” means the sum described in part 2 of the schedule to this scheme, which represents permanent endowment of the Charity.

“Connected person” has the same meaning as in section 118 Charities Act 2011.

“the Committee” means the Committee of the Executive set pursuant to Section 14(2) Local Government Act 2000.

## **ADMINISTRATION**

### **2. Administration**

The Charity is to be administered in accordance with this scheme. This scheme replaces the former trusts of the Charity.

## **OBJECTS OF THE CHARITY**

### **3. Objects of the Charity**

The objects of the Charity are:

- 1) To promote the benefit of the beneficiaries by the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the beneficiaries.

- 2) Subject to clause 4 of this scheme, the Victoria Hall is designated land and must be used for the object at sub-clause 3(1).
- 3) If and insofar as the income of the Charity cannot be applied towards the object at sub-clause 3(1), it may be applied in furthering general charitable purposes for benefit of the Beneficiaries.
- 4) Queens Hall is designated land and any land which may be exchanged for Queens Hall pursuant to the power in clause 4(2) must be used for the charitable object at sub-clause 3(1).

## **TRUSTEE(S)**

### **4. Trustees**

- 1) The Existing Trustee is the sole trustee until immediately after the Leases are executed.
- 2) During the time the Existing Trustee is acting as sole trustee it must delegate decision making to a Committee.
- 3) The membership of the Committee shall be as follows:
  - (a) five persons independent of the Council
  - (b) three elected members of the Council.
- 4) No business shall be conducted at a meeting of the Committee unless four members of the Committee are present throughout the meeting.
- 5) A member of the Committee must:
  - (a) declare the nature and extent of any interest, direct or indirect (including a conflict of loyalty), the member has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not been previously declared; and
  - (b) be absent from any discussions of the Committee in which it is possible that a conflict will arise between the duty to act solely in the interests of the Charity and any interest of the member including a conflict of loyalty.
  - (c) Any member of the Committee absenting from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the Committee on the matter
- 6) Immediately after executing the Leases, the trustees of the Charity are the Existing Trustee and a minimum of two Independent Trustees (together "the trustees").
- 7) The Committee is responsible for the selection and appointment of the first Independent Trustees. In selecting individuals for appointment as Independent Trustees, the Committee must proper and transparent recruitment process and have regard to the skills, knowledge and experience needed for the effective administration of the Charity. Upon completion of the appointment of the first Independent Trustees the Committee will cease to have a role in the management and administration of the

Charity. Apart from the first Independent Trustees, every Independent Trustee must be appointed by a resolution of the trustees.

- 8) The trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each trustee.
- 9) No business shall be conducted at a meeting of the trustees unless at least two trustees are present throughout the meeting.
- 6) A trustee must:
  - (a) declare the nature and extent of any interest, direct or indirect, the trustee has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not been previously declared; and
  - (b) be absent from any discussions of the trustees in which it is possible that a conflict will arise between the duty to act solely in the interests of the Charity and any interest of trustee.
  - (c) Any charity trustee absenting from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter
- 7) Minutes of the trustees must be kept in writing and retained by the trustees separately from the Council's records.
- 8) Immediately after the Leases are executed, the Existing Trustee shall be appointed as the holding trustee for the Charity's designated land and all other property (if any).

#### **POWER TO ENTER THE LEASES**

##### **5. Power to enter the Leases**

The Existing Trustee may be a party to Leases with Surejogi, the Council and Mastcraft provided that the Leases comply with the provisions specified in Part 2 of the schedule to this scheme. The Leases must also comply with Part 7 of the 2011 Act.

#### **POWER TO EXCHANGE DESIGNATED LAND**

##### **6. Power to exchange designated land**

The Existing Trustee, if done before or at the same time as the Leases being executed, or the trustees, if done after the Leases had been executed, may exercise the following powers in furtherance of the objects of the Charity:

- 1) The Existing Trustee or the trustees may within six months from the date of this scheme enter into an agreement to exchange the property described in Part 3 of the schedule to this scheme with Queens Hall provided that the Existing Trustee or the trustees are satisfied that the terms of the agreement to exchange are in best the interests of the Charity.

#### **PREMIUM**

## **7. Power to use the premium**

In addition to any other powers which they have, the trustees may exercise the following powers in furtherance of the objects of the Charity:

- 1) The trustees may use the premium to acquire freehold property to replace Victoria Hall or Queens Hall. Any property acquired with the premium must be held on trust for use for the object stated at sub clause 3(1).
- 2) If and in so far as the premium is not used to acquire replacement freehold property, the premium must be invested by the trustees. The income arising from the invested premium must be applied in furthering the objects in clause 3 of this scheme. The trustees may expend part or all of the capital of the invested premium but only in accordance with sub clause 7(3) of this scheme.

## **7. Use of income and capital**

- 1) The trustees must firstly apply:
  - a. the Charity's income; and
  - b. if the trustees think fit, expendable endowment; and
  - c. when the expenditure can properly be charged to it, its permanent endowment (including the premium when invested)

in meeting the proper costs of administering the Charity and of managing its property (including the repair and insurance of its land and buildings);

- 2) After making these payments, the trustees must apply the remaining income in furthering the objects of the Charity.
- 3) The trustee may also apply for the objects of the Charity:
  - a. expendable endowment; and
  - b. investment permanent endowment, but only:
    - i. where it is permitted in accordance with (and subject to the conditions in) the Charities Act 2011; or
    - ii. on such terms (including for the replacement of the amount spent) as the Commission may approve in advance.

## **GENERAL PROVISIONS**

### **8. Questions relating to the Scheme**

The Commission may decide any question put to it concerning:

- 1) the interpretation of this scheme; or
- 2) the propriety or validity of anything done or intended to be done under it.



## SCHEDULE

### PART 1

Property	Land Registry title number
Part of the Town Hall known as the Victoria Hall, shown edged and hatched red on the plan at Annex 1 to this scheme.	Part of title number AGL135666

### PART 2

**Required provisions for the Head Lease between the Council and the Existing Trustee on behalf of the Charity and Surejogi in respect of the Town Hall (which includes the Victoria Hall and Queens Hall), the Under Lease in respect of the Victoria Hall between Surejogi and the Existing Trustee on behalf of the Charity for Victoria Hall and the Sub-Underlease between the Council the Existing Trustee on behalf of the Charity for the Queens Hall. The Head Lease, Under Lease and Sub-Underlease together are ‘the Leases’.**

<b>Term for the Leases</b>	250 years
<b>Premium for Victoria Hall</b>	<p>The Charity’s share of the total premium payable by Surejogi to the Council under the Head Lease for the Town Hall. The share is to be calculated on the basis of a pro-rata of the proportion of floor area of the Victoria Hall and the property described in part 3 of the schedule to this scheme as part of the total floor area of the Town Hall</p> <p>The Council is not entitled to recover from the Charity’s share of the total premium any transaction or other costs arising from entering into the Leases.</p> <p>The method of calculating that the total premium must be agreed as being in the best interests of the Charity by the Committee.</p>
<b>Access and boundaries</b>	The Leases must include a grant of an easement or other right of access as appropriate to ensure that the Charity’s property

	<p>can be accessed at all agreed times by the Charity and its Beneficiaries for the duration of the Lease.</p> <p>The Leases must clearly define the boundaries of the Victoria Hall, Queen’s Hall and Princes Hall. The access and the boundaries must be agreed as being in the best interests of the Charity by the Committee of the Executive.</p>
<b>Income</b>	<p>The Leases must include a process for the income from use of Charity’s property to include:</p> <ul style="list-style-type: none"> <li>(i) how the income is defined</li> <li>(ii) how income will be collected and accounted for;</li> <li>(iii) the method of transferring the income to the Charity including payment dates; and</li> <li>(iv) what deductions (if any) are permitted</li> </ul> <p>and a mechanism for resolving any disputes.</p> <p>This process must be agreed as being in the best interests of the Charity by the Committee.</p>
<b>Community use requirement for Victoria Hall</b>	<p>The Leases must place a user covenant on Surejogi to prohibit any use of Victoria Hall other than in accordance with the charitable objects set out in clause 3 of this scheme with the exception of the 10 days reserved to the Council for use in furtherance of its statutory functions.</p> <p>The use of the Victoria Hall and Queen’s Hall will be regulated by the terms of a ‘Community Use Protocol’ contained in the Leases. The agreed Community Use Protocol will be attached as Annex A to the Scheme once made.</p>
<b>Reserved use of Victoria Hall for the Council</b>	<p>There will be up to 10 days reserved to the Council in each and every year of the term of the Leases to use Victoria Hall to carry out its statutory functions (e.g. for election purposes) but for no other purpose. The Council will pay to the Charity the market rate for hiring the Victoria Hall on these days. The trustees will notify the Council of the market rate on request.</p> <p>The Council will notify the Charity in advance of each and every of the dates of the 10 reserved days on which it intends to use the Victoria Hall for its statutory functions. The parties must work co-operatively to resolve any conflicting bookings of the Victoria Hall.</p>

<b>Repair and maintenance obligations for Victoria Hall</b>	Will be in accordance with the Leases:
<b>Parties to the Leases</b>	<ul style="list-style-type: none"> <li>• The Council (Landlord) of the first part;</li> <li>• The Existing Trustee of the of the Charity (Charity) of the second part;</li> <li>• Surejogi Ealing Town Hall Limited (Tenant) of the third part; and</li> <li>• Mastcraft Limited (Guarantor) of the fourth part.</li> </ul> <p>The Commission has been advised that the Council, as the registered proprietor of the freehold to the Town Hall, is entering into the leases as one party (notwithstanding that it is acting in its capacity as local authority and its capacity as a charity trustee. The leases encompass those parts of the Town that are not held on charitable and the Charity's property (Victoria Hall and Queen's Hall).</p>

**PART 3**

Property	Land Registry title number
Part of the Town Hall known as the Prince's Hall, shown edged black on the plan at Annex 2 to this scheme.	Part of title number AGL135666

**PART 4**

Property	Land Registry title number
Part of the Town Hall known as the Queen's Hall, shown cross-hatched black on the plan at Annex 2 to this scheme.	Part of title number AGL135666

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