



**Report for:
ACTION AND INFORMATION**

Contains Confidential or Exempt Information	No
Title	Victoria Hall Trust – update report
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Author(s)	Adam Whalley and Helen Harris
Portfolio(s)	N/A
For Consideration By	The Victoria Hall Trust Committee acting as the Trustee of the Victoria Hall Trust
Date to be Considered	25 April 2024
Implementation Date if Not Called In	N/A
Affected Wards	Ealing Broadway
Keywords/Index	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 1st June 2022 to 31st 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 31st 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 [16th April 2019](#) and [28th 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](#)

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