

Cabinet

29 August 2023

Amendments to the Charitable Scheme Brandon Colliery Miners' Welfare Hall

Ordinary Decision



Joint report of Amy Harhoff, Corporate Director of Regeneration and Economic Growth, and Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change

Electoral division(s) affected:

Brandon

Purpose of the Report

- 1 To seek approval from Cabinet, acting in its role as Trustee of the Charitable Scheme known as Brandon Colliery Miners' Welfare Hall, to approach the Charity Commission to alter the scheme.
- 2 To seek approval to delegate authority to the Corporate Director of Regeneration and Economic Growth to complete the actions needed to alter the scheme.

Executive summary

- 3 Brandon Village Hall (Asset UPRN: 50521S01) which is shown edged red at Appendix 2 is held under a Charitable Scheme (Charity No. 520743) dated 7th July 1998 where the County Council is Trustee.
- 4 Under the Scheme, the building is held by the County Council, though it does not have beneficial ownership. This means that the County Council cannot sell or dispose of the hall in the way it can with other County Council assets, so can never make any money from the proceeds of a sale, and, if sold, must abide with what is outlined in the trust document.
- 5 Brandon Community Association (BCA) ['the Association'] currently operate the village hall without a written agreement and as such they do not have security of tenure that will allow them to attract future capital investment for the maintenance of the hall.

- 6 Although the Association has engaged with the County Council in the Asset Transfer process and have developed a sustainable business plan, the County Council is currently unable to grant a lease for the premises as the current Charitable Scheme does not allow this.
- 7 The restrictive nature of the historic Charitable Schemes means that they are now not fit for purpose, particularly as they are not recognised by national and local funding bodies. There are two potential routes available to bring in any significant investment for buildings held under these Schemes:
 - a) For DCC to develop a lease to give security of tenure to their operating organisations.
 - b) For DCC to relinquish its trust status and to transfer this status to any community organisation thereby providing security of tenure to the community organisation.
- 8 In 2016, a report recommended that Cabinet, acting in their capacity as Trustees, apply to the Charity Commission to explore the possibility of the Association taking on the trustee role as a new Community Interest Organisation and subject to no objections from CISWO, for the Council to remove itself as Trustee and transfer the trusteeship to the new CIO. That recommendation was never implemented, largely on the back of objections from CISWO.
- 9 This report seeks the consent of Cabinet, acting in their capacity as Trustees, to revisit the recommendation from the 2016 report with a view to reaching a mutually agreeable conclusion for all parties which will provide BCA with the necessary legal interest in Brandon Village Hall.

Recommendation

- 10 It is recommended that Cabinet, as Trustees of the Brandon Colliery Miners' Welfare Hall Scheme, agree:
 - a) That delegated authority be given to the Corporate Director of Regeneration and Economic Growth, Corporate Director of Resources and relevant Portfolio Holder(s) to take such steps as may be necessary to ensure that Brandon Community Association receive a legal interest in Brandon Village Hall.

Current Position

- 11 Brandon Village Hall (Asset UPRN: 50521S01) which is shown edged red at Appendix 2 is held under a Charitable Scheme (Charity No. 520743) where the County Council is Trustee. Under the Scheme, the building is held by the County Council, though it does not have beneficial ownership. This means that the County Council cannot sell or dispose of the hall in the way it can with other County Council assets, so can never make any money from the proceeds of a sale, and, if sold, must abide with what is outlined in the trust document.
- 12 Brandon Community Association (BCA), a charitable incorporated organisation made up of local volunteers currently manage the Hall on a day to day basis but do so without any written agreement with the Council being in place. As part of this occupation a range of a community activities take place in the hall on a daily basis.
- 13 As Trustee, the County Council does not have any obligations or responsibility to use its own (County Council) funds to pay for the maintenance or repairs of buildings held under these schemes. Under the terms of the Charitable Scheme for the hall, the income earned from activities and services operated from the building must be used to pay for any utilities, maintenance and running costs.
- 14 This method of using income from activities to pay for maintenance of a building, is the same for all leased community buildings held by the County Council, however the difference with Brandon Village Hall is that BCA currently do not have a legal interest in the building. As a result of this restriction, BCA cannot apply for funding for any capital investment in the building or its facilities.
- 15 As part of the due diligence process, officers from the Partnerships Team have been working with BCA to ensure they are sustainable, which includes supporting the development of a business plan which provides clear direction for the future of the building and supporting them in promoting the hall amongst members of the community.

Proposed way forward

- 16 The proposed preferred way forward for this building is for the Council to divest itself of trusteeship of this scheme. A report was brought to Cabinet as Trustee in October 2016, which set out a recommendation to apply to the Charity Commission to explore the possibility of the Association taking on the trustee role as a new Community Interest Organisation and for the Council to remove itself as Trustee and transfer the trusteeship to the new CIO.

- 17 Prior to making an application to the Charity Commission, the Council began discussions with the Coal Industry Social Welfare Organisation (CISWO) regarding its plans. CISWO were historically the Trustee and accordingly, when the Charity Commission are considering the Council's application, they will have regard to any representations made by them.
- 18 Following the approach made to CISWO it is understood that they did not favour the Association taking on the trustee role as a new Community Interest Organisation. CISWO's preference was for the council to remain as trustees. It is not clear why this view was expressed but was likely due to the Council's strong covenant strength with the certainty this brought for the future of the building.
- 19 The views of CISWO were not challenged at the time due to the complexities of the legal arrangements with CISWO with this and other similar buildings. It was determined that due to these complexities a separate strategic project was needed to provide focussed and dedicated resource from both internal staff and to bring in specialist legal advice. Due to other priorities this has not yet been progressed.
- 20 Notwithstanding the views of CISWO in 2016, the transfer of trusteeship remains the preferred option as it allows a direct relationship between the CIO, CISWO and the Charity Commission. In the seven years since the approach was made to CISWO, BCA have a proven track record, they have developed a solid business plan and have clearly demonstrated that they are operating with the best interests of the community and are committed to the continued operation and success of Brandon Village Hall. They have the capability to provide a sustainable future for the building in the interest of the community without the oversight of the Council.
- 21 If it does not prove possible to reach an agreement on this as the way forward, then offering a long fully repairing and insuring lease to BCA remains a viable option.
- 22 A lease will still provide the BCA with a legal interest in the building allowing them to attract external funding for the maintenance and improvement of the building held in trust and will also be in line with the council's strategy of sustainability.
- 23 If this option was taken forward, then the Council would become the Landlord of BCA.
- 24 As trustee, the council has a fiduciary duty to ensure that the best interests of the building, held in trust, are maintained. Either of the approaches outlined above remain in line with the council's approach Community Building's

Strategy, which has been to support a network of sustainable community buildings, this approach aligns to that.

- 25 This is a complex process because it is reliant on third party consent from the Charity Commission and the engagement of CISWO. The timelines for this process are not in DCC's control and it is difficult therefore to provide an assessment of when matters can be brought to a conclusion. However regular engagement will be maintained with all parties during the process.
- 26 Should Cabinet decide to agree to the recommendation, the Corporate Director will:
- a) Consult with both CISWO and BCA on the proposal to have the scheme transferred to BCA;
 - b) Having had regard to the consultation responses, the Corporate Director will either apply to the Charity Commission for the scheme to be transferred, or apply to the Commission for a variation to the scheme to allow the Council to grant a lease to BCA;
 - c) If the proposal is to grant a lease, council officers shall negotiate the terms of such lease with BCA.

Background papers

- Amendments to the CISWO Trust Arrangements – report to Cabinet 19 October 2016

Other useful documents

- Appendix 2: Plan(s)
- Appendix 3: Charitable Scheme

Author(s)

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Appendix 1: Implications

Legal Implications

Cabinet act as Trustee where there are Charitable Schemes and therefore are required to make the decision as to whether to apply for an amendment to the Charitable Scheme. Subject to that application, Cabinet can delegate authority to the Head of Corporate Property and Land to negotiate and enter into a lease with the Community Association.

To alter the Charitable Scheme and to develop a lease between the County Council and the Community Association.

Finance

If the building is leased to BCA rather than the scheme transferred to them the proposed rent will be £1/One Peppercorn per annum exclusive as per the Community Buildings programme approach on a full repairing and insurance basis.

Consultation

Local Councillors Paul Taylor and Jonathan Elmer have been involved in meetings with the Community Association including a recent meeting with the Leader of the Council, Councillor Amanda Hopgood and Councillor Mark Wilkes as Portfolio Holder for Neighbourhoods and Climate Change. Councillor James Rowlandson as Portfolio Holder for Resources, Investments and Assets consulted.

Equality and Diversity / Public Sector Equality Duty

N/A

Climate Change

The funds held for the property will improve the environmental sustainability of the premises.

Human Rights

N/A

Crime and Disorder

Current services from the hall have had a positive effect on the reduction of anti-social behaviour working in partnership with the local police.

Staffing

N/A

Accommodation

N/A

Risk

A resolution to the current arrangements are needed to allow BCA to access funding to support them. Without this there is a risk that the venue will not be financially viable and place the sustainability of the venue at risk.

Procurement

N/A