

Local Members Interest

Cllr Robert Pritchard – Tamworth, Perrycrofts

Charities and Trusts Committee - Thursday 18 January 2024

Tamworth Youth Centre Fund (Charity Number 522734)

Items for Consideration

The Committee are asked to consider whether to:

- a. reaffirm the previous decision to sell the Property and use the sale proceeds to create an annual grants programme to further the charitable objectives;
- b. approve the revised scheme wording as shown in Appendix 2; and
- c. approve the publication of the public notice as shown in Appendix 3 for a period of one month and delegate approval to the Assistant Director for Commercial and Assets to approve the completion and submission to the Charity Commission of the Form of Declaration following the expiry of the public notice.

Report of the Director of Deputy Chief Executive and Director for Corporate Services

Summary

1. The Committee has previously agreed to the principle of the disposal of the Youth Centre property, as shown edged in red in Annex A ('the Property'), and the arrangements to manage the income from capital invested for the benefit of the charitable objectives.
2. Further draft revised objectives have been received from the Charity Commission and are presented for approval by the Committee.
3. Before deciding whether to amend the scheme the Charity Commission require the Committee to:
 - (a) confirm whether they are still happy to proceed with the amended scheme and their rationale for this decision; and
 - (b) advertise a public notice of the scheme amendments for a period of one month on the property, two local notice boards, on Staffordshire County Council's website and the Charity Committee's website.

Staffordshire County Council's role as a Charity Trustee

4. Charity Trustees are required to ensure that any decisions made on behalf of the Charity are in the best interests of the Charity and consistent with the Charity's objects and powers.
5. When making decisions for the Charity, the Charity Trustees are therefore required to:
 - a) act within their powers;
 - b) act in good faith and only in the interests of the Charity;
 - c) make sure they are sufficiently informed;
 - d) take account of all relevant factors;
 - e) ignore any irrelevant factors;
 - f) manage conflicts of interests; and
 - g) make decisions that are within the range of decisions that a reasonable trustee body could make.
6. Where a local authority is a trustee of a Charity there can often be a conflict of interest between the interests of the local authority and the Charity. In order to manage any potential conflicts Staffordshire County Council set up the Committee whose decision-making process is separate to the decisions making process of Staffordshire County Council.
7. In this instance there is a potential conflict because Staffordshire County Council are the tenant of the Property following the grant of a lease dated the 23rd June 1977 for a term of 99 years. A decision to sell the Property would require the surrender of this lease and the Charity Trustees must therefore ensure that any decisions made are in the best interest of the Charity, in line with paragraph 5 above and that the rationale for such decisions are clearly documented.
8. In addition, as referred to in the previous reports the proposed sale would be a joint sale with Staffordshire County Council who own adjoining land. If a joint sale proceeds it is expected that a synergistic premium will be received in addition to the market value. However, again the Charity Trustees must ensure that they are comfortable that this is in the best interest of the Charity, in line with paragraph 5 above and that the rationale for such decisions are clearly documented.

Report

Decision to amend the Scheme

9. Prior to making the application to amend the Scheme the Committee was presented with a report on the 15th June 2021 which set out the available options for the future use of the Property and the advantages and disadvantages for each option. These options were to:
- (a) maintain the status quo and take no further action;
 - (b) make an application to change the charitable objectives to enable the sale of the Property and the appointment of quasi management trustees to deliver an annual grants programme in accordance with the charitable objectives; or
 - (c) to source a new tenant as Staffordshire County Council and the current occupiers were no longer able to use the Property in accordance with the charitable objectives.

A summary of the advantages and disadvantages highlighted in this report are set out in Appendix 1.

10. At that time, option b was favoured by the Charity Trustees on the basis that the current tenants and occupiers were not able to use the Property fully in accordance with the charitable objectives and that it had not been possible to source an alternative tenant who was able to further the charitable objectives and take on the repairing liability for the Property. Accordingly, the best way to further the charitable objectives was considered to be the sale of the Property with the sale proceeds being used to create an annual grants programme.

11. Before amending the Scheme the Charity Commission required a formal consultation to be undertaken which received 6 responses. 2 supported the proposed sale and reinvestment, 3 supported maintaining the status quo but this would mean that the charitable objectives would still not be fully complied with and 1 party supported reletting the Property but that party was not in a position to take on the repairing liability of the Property themselves. The consultation specifically asked that the parties only supported reletting the Property if they were able to take on a lease of the Property due to the difficulty in sourcing tenants.

12. The reports set out in the background documents contain a detailed record of the information which has been available to the Charity Trustees when making prior decisions. This information remains accurate save that Humankind served notice and ceased to occupy the Property with effect from the 31st March 2024. MPFT are continuing to deliver the service previously provided by Humankind but they do not wish to occupy the

Property for this purpose on a long term basis and only wish for a short term occupation while other premises are undertaking alternations. When MPFT vacate later this year the property will therefore be vacant.

13. Before amending the Scheme the Charity Commission require the Charity Trustees to again consider the options for the future use of the Property and to evidence in the minutes the rationale for this decision and how the Charity Trustees consider the results of the consultation inform their decision.

Revised Scheme Wording

14. The governing document of the Charity confirms that the Charity Trustees shall hold the Property upon trust to permit the same to be appropriated and used for the *'promotion of the social, mental, moral physical and spiritual well-being of boys and girls resident in Tamworth aforesaid and the surrounding district by the provision of facilities for social and physical training, education and recreation'*.

15. On the 13th June 2023, the Committee approved a revised objective to, *'To promote social, mental, moral, physical and spiritual well-being of younger residents under 25 years of age in Tamworth and the surrounding district with the object of improving the condition of life for the same persons'*.

16. The Charity Commission have proposed further amendments to the proposed objectives on the basis that the governing document focuses on assisting in the provisions of recreation facilities for young people. Accordingly, the Charity Commission have proposed the following objectives for the amended scheme:

To provide or assist in the provision of facilities for recreation or other leisure time occupation of persons under 25 years of age who are resident in the area of benefit with the object of improving the conditions of life for the said persons.

17. It is for the Charity Trustees to determine whether the wording of the amended scheme is in accordance with the spirit of the original gift and whether this is suitable and effective in light of the current social and economic circumstances.

Public Notice

18. When the proposed amendments to the Scheme are approved by the Charity Trustees the Charity Commission required a public notice of the

scheme amendments, in the form set out in Appendix 3, to be advertised for a period of one month on the property, two local notice boards, on Staffordshire County Council's website and the Charity Commission's website.

19. If the Charity Commission receive any representations on the draft scheme, then they will need to consider these and a decision will need to be made by the Charity Commission on whether the scheme can proceed or not.
20. An update on the outcome of the public notice will be provided at the next Committee meeting.

Equalities Implications

21. The statutory functions discharged by the Charity Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011 (as amended by the Charities Act 2022), Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.
22. Also, the objectives of the charity are specific to a defined group, that group remains the same.

Legal Implications

23. Paragraphs 4 – 7 above set out the Charity Trustee's responsibilities. These responsibilities, and the consequences of not making a decision in line with these responsibilities, are set out in further detail by the Charity Commission in the guidance issued to Charity Trustee's which can be reviewed via the following link: [It's your decision: charity trustees and decision making - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/its-your-decision-charity-trustees-and-decision-making)

24. To make a decision to amend the Scheme the Charity Trustees must be satisfied and able to evidence that the original charitable objectives can no longer be fulfilled and the amended scheme must comply with the cy-pres doctrine to allow the wishes of the donor to be carried out even if the original purpose of the gift is no longer possible in light of current social and economic circumstances.

25. Following this doctrine the Charity Commission can amend a Scheme under s62 of the Charities Act 2011 when the objectives set out in the governing document:

- (a) can no longer be carried out, or not in the way laid down in the governing document
- (b) have been fulfilled, or adequately provided for in other ways (for example, out of public funds)
- (c) do not provide a use for all of the charity's income or property
- (d) use outdated definitions of areas, places, or classes of people
- (e) have ceased to be charitable in law
- (f) have stopped being a useful way of using the funds or property (for example, providing for very small payments or gifts of food or fuel to beneficiaries)
- (g) where two or more charities with similar objects want to merge but do not have the legal power to do so

Resource and value for Money Implications

26. Members are reminded that the decision to change the objectives and to sell the Property to provide income to invest in the charitable objectives have to be made on the basis that this is right course of action for the Charity trust alone and not any other local authority benefit.

Risk Implications

27. If the Committee does not agree to the proposed changes and disposal or the Charity Commission do not approve the amended Scheme then there is a risk that the Tamworth Youth Centre may no longer be able to be used in accordance with the charitable purposes.

List of Background Documents/Appendices:

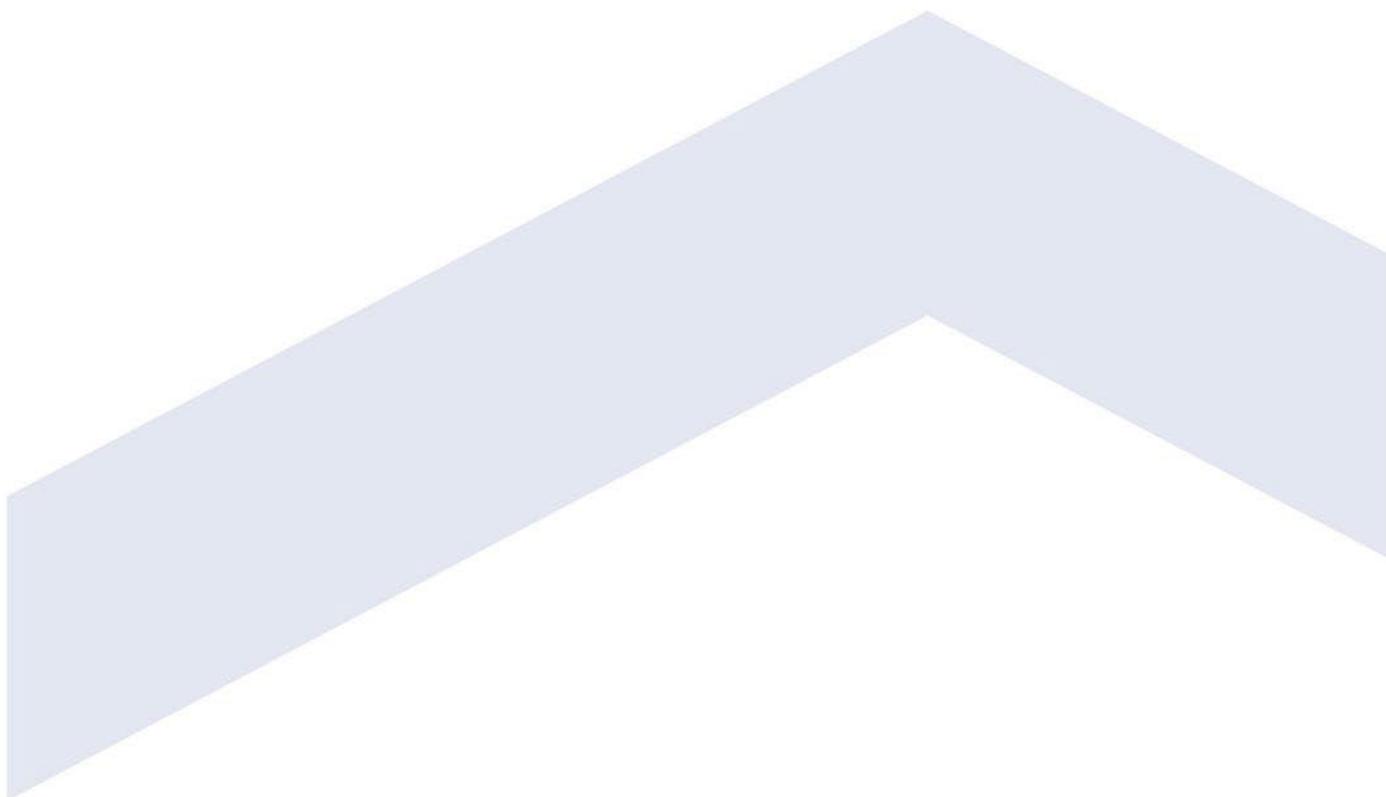
Charities and Trusts Committee Report 15th June 2021
Charities and Trusts Committee Report 14th June 2022
Charities and Trusts Committee Report 13th June 2023

Annex A – Plan showing extent of Tamworth Youth Centre

Appendix 1 – Abstract of Report 15th June 2021
Appendix 2 – Tamworth Youth Centre Proposed Revised Scheme
Appendix 3 – Form of Public Notice and Declaration

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Annex A – Plan showing extent of Tamworth Youth Centre

