

Report on behalf of Kevin Kendall, County Property Officer, Corporate Property

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| Report to: | County Council |
| Date: | 20 February 2015 |
| Subject: | Bourne Town Hall |

Summary:

To delegate the fulfilment of the responsibilities of the Council as sole corporate trustee in relation to Bourne Town Hall from the full Council to a committee.

Recommendation(s):

That Council,

1. Establish a Committee to be known as the Bourne Town Hall Trust Management Committee with the membership and terms of reference attached at Appendix A;
2. Appoint five Councillors as members of the Committee in accordance with paragraph 5.1(a) of the Terms of Reference attached at Appendix A;
3. Authorise the Monitoring Officer to make such amendments (including consequential amendments) to the Council's Constitution as are necessary to incorporate the said Committee within the Constitution as a Regulatory or other committee.

1. Background

When Lincolnshire County Council acquired Bourne Town Hall in 1974 on local government reorganisation it acquired it as a trust of which the Council became the sole corporate trustee.

Lincolnshire County Council has commissioned specialist legal advice from Geldards and this Report follows up on that advice to suggest the establishment of a committee as the appropriate mechanism through which the Council carries out its responsibilities regarding the Council's duties as corporate trustee of the Hall

Terms of the charitable trust

The Hall is a charity in law, with its governing document being an indenture dated 11 October 1821. The Council is the sole corporate trustee of the charity.

The spirit of the original gift is the provision of a town hall and market for Bourne, in order to provide a public benefit to the town, and contribute to the town's general prosperity and

welfare. In providing such a facility, the gift was aimed at accommodating and enhancing various public functions including the judicial, military, civic and commercial functions of the town.

Duties of governing the independent charity

The Hall is an independent trust, with a charitable purpose that is wholly separate from the activities of the Council. In general terms, the Council as charity trustee is responsible for the control and management of the administration of the charity. It also has a general duty to act at all times in the best interests of the charity. The Council must ensure compliance with; charity law and its governing document, and other legislation, such as health and safety and equality law.

As the Council has a dual role in owing duties as a local authority and separately as the trustee of an independent charity this could create a potential conflict of interest.

As well as pursuing an effective arrangement for the governance of the charity, the Council as trustee will need to explore and consider the various options available and draw up a list of preferred or possible options for dealing with the charity. This exercise should include seeking public opinion via a consultation on the future use of the building, once an initial list of potential options is prepared. This will inform a provisional decision by the Council, and appropriate applications to the Charity Commission to request consent for required actions and to grant new charitable objects.

As per specialist legal advice received it is recommended that the trustee function in relation to the Hall should be delegated from the full Council to a committee:

A membership of 5 is recommended as appropriate for the committee to allow a range of views to be put forward. The individuals appointed by the full Council to the committee should so far as possible be un-conflicted i.e. individuals who have no personal interest in or loyalties to any other body with whom the interests of the Trust would conflict. This principle is essential to ensure good governance. On external legal advice the committee should not include members who are elected by the town of Bourne.

Support may be provided to cover clerking and administration. Depending on the matters being considered by the committee, legal and accountancy support from internal departments may be also provided, maintaining appropriate governance to avoid conflict of interest as necessary. These individuals will not be members of the committee.

Draft terms of reference for the Committee are attached at Appendix A. These seek to strike an appropriate balance between enabling suitably efficient decision-making in the management of the Council's trust obligations with the proper reservation of major decision-making to the full Council.

It is proposed that the terms of reference of the Committee are included in the Constitution and that this committee is included as a Regulatory or other committee.

It is important to note however that the Committee is not established to fulfil the Council's public law functions as other committees are. The committee exists to fulfil the Council's private law role as a trustee under a property transaction. The role of a trustee carries with it legal obligations to administer the trust in accordance with its terms and act in the interests of the beneficiaries. Where the trust is charitable additional requirements need to be met as laid down in charities legislation.

This committee is that it is not covered by the political proportionality rules of the Local Government and Housing Act 1989. Membership of the Committee should reflect the particular status of this committee and the particular nature of the obligations.

These considerations have been taken into account in identifying the membership proposed in the recommendations.

2. Conclusion

The Council has obligations as sole corporate trustee of Bourne Town Hall. At present only full Council is authorised to take decisions in that capacity. It is recommended that full Council establish a committee to fulfil certain aspects of its role. This allows for more flexible and efficient decision-making in relation to the Trust.

Legal advice has been taken on the responsibilities that come with the status of trustee and the first task of the proposed committee would be to review the current position and identify options for the future use of the building consistent with the trust obligations.

3. Legal Comments:

The Report proposes arrangements to assist the Council in fulfilling its responsibilities as sole corporate trustee of Bourne Town Hall. The legal issues relating to the proposal are set out in the Report.

In coming to its decision the Council is not exercising its public law functions but is fulfilling its role as a trustee.

The decision is within the remit of the full Council in its capacity as sole corporate trustee of the Trust.

4. Resource Comments:

There will be additional costs in setting up the committee, public consultation and further legal advice depending on which option is chosen. Any costs of managing the Hall will be met by the Council from existing budgets in the absence of any funds within the charity

5. Consultation

a) Has Local Member Been Consulted?

Yes

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

n/a

d) Policy Proofing Actions Required

n/a

6. Appendices

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| These are listed below and attached at the back of the report | |
| Appendix A | Draft Terms of Reference |

7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Wendy Lanes, who can be contacted on wendy.lanes@lincolnshire.gov.uk.