

Report of the Director of Place to the meeting of Regulatory and Appeals to be held on 28th March 2024

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Subject:

Disposal of 40 Browgate, Baildon ARN 52746 namely Baildon War Memorial.
Consisting of both house and shrine, which is held on charitable trust.

Summary statement:

Regulatory & Appeals Committee, acting as Trustees of Baildon War memorial Charity 220830 are requested to agree to disposal of 40 Browgate Baildon namely Baildon War Memorial. Consisting of both house and shrine following an appraisal of options by Phil Barker, Assistant Director of Sport & Culture under delegated powers from the Director of Place.

EQUALITY & DIVERSITY:

This reports supports the Bradford District Equality Objectives and Equality Plan 2021-2025 by:-

- Improving the way we work to help everyone
- Working better with our communities

David Shepherd
Director of Place

Portfolio: Place

Report Contact: Phil Barker
Phone: (01274) 431377
E-mail: phil.barker@bradford.gov.uk

Overview & Scrutiny Area:

Regulatory & Appeals Committee

1. SUMMARY

- 1.1 Regulatory & Appeals Committee, acting as Trustees of Baildon War memorial Charity 220830 are requested to agree to disposal of 40 Browgate Baildon namely Baildon War Memorial. Consisting of both house and shrine following an appraisal of options by Phil Barker, Assistant Director of Sport & Culture under delegated powers from the Director of Place.

2. BACKGROUND

- 2.1 Bradford Flower Homes Development Limited Charity 119575 have indicated, via the Councils Estates Service, a wish to take over management responsibility and custodianship of Baildon War Memorial (consisting of both house and shrine) held on charitable trust by Baildon War memorial Charity 220830
- 2.2 Bradford Flower Homes Development Limited Charity 119575 states *“its objects are restricted specifically, in each case only for the public benefit to relieve older/elderly people who are in need by reason of their age, ill health, disability, financial hardship or other disadvantage including the provision of social housing, other housing, accommodation, and assistance.”*
- 2.3 At the Regulatory & Appeals Trustees meeting on 16.3.23 agreed that the Assistant Director, Sport & Culture in Place be authorised to appraise the options for the potential disposal of Lodge and associated land at 40 Brow Gate, Baildon (ARN 52746) by transfer to Bradford Flower Homes Developments Ltd and that a detailed progress report be provided to a meeting of the Trustees, once the appraisal has been completed.
- 2.4 The purposes of the Baildon War Memorial (220830) charity are *“The provision of a war shrine and memorial house for the benefit of poor and infirm married couples of good character who are resident in Baildon at the time of their appointment”*.
- 2.5 The Trustees (R&A) must act in the charity’s best interests to carry out its purposes, both now and for the future.
- 2.6 This property has been vacant since the last occupier died over 8 years ago. It’s now in a heavily dilapidated state of repair which will require over £150,000 to refurbish it to bring it to a habitable state and comply with DDA legislation.
- 2.7 The Council are not able to access funding to undertake the works and there is no budget within the Council to undertake the works.
- 2.8 Bradford Flower Fund are able access their own capital and external funding and have agreed to undertake all works necessary to bring the property back to its intended purpose of providing accommodation for appropriate people.
- 2.9 The options were presented to Phil Baker, Assistant Director of Culture, Sport and Leisure in a briefing note – see Appendix A

- 2.10 The outcome of the option appraisal dated 29.2.24 is attached as Appendix B and states *"to confirm that I have appraised the options Agree to transfer asset to Bradford Flower Homes Development Ltd as the purposes of both charities align. Ensuring they retain the war memorial. See Appendix B*

3. OTHER CONSIDERATIONS

- 3.1 To follow due process, under Section 6 of the Trustees of Land and Appointment of Trustees Act 1996, whereby The Committee must consider the request in terms of what is in the best interests of the charity. Charity Commission Guidance advises that this means; "Acting in the charity's best interest's means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future."

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 Costs to be borne by Bradford Flower Fund

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 The Committee must consider the request in terms of what is in the best interests of the charity. Charity Commission Guidance advises that this means; "Acting in the charity's best interest's means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future."

6. LEGAL APPRAISAL

- 6.1 Baildon War Memorial charity's governing document is the Scheme dated 21st February 1928 as amended by Scheme dated 3rd February 1965 (the Scheme). The Scheme doesn't seem to contain an express power to transfer the charity assets to, or merge with, another charity or a general power to do any other lawful thing that is necessary or desirable for the achievement of the charity's purposes nor does it make provision for the charity's dissolution. In addition, the Scheme doesn't contain other rules or restrictions that would prevent the proposed charity asset transfer.

- 6.2 Notwithstanding, section 105 of the Charities Act 2011 (as amended) provides a statutory power for the Charity Commission to authorise dealings with charity property where it appears to them that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, the Charity Commission may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity.

- 6.3 The charity trustees must first demonstrate the following points:

- a. how the present charitable trusts are not actually workable;
- b. how they are encountering difficulties in expending the income or using Baildon War Memorial upon the present charitable trusts; and
- c. how the proposed charity asset transfer is in the best interest of the charity.

6.4 The charity trustees must consider the following points as part of the decision making process:

- a. whether the proposal for Bradford Flower Homes Development Ltd (the receiving charity) to take over custodianship duties and responsibilities is the best way forward to ensure that Baildon War Memorial will be used as it was intended to be, so furthers the existing charitable aims and objectives of Baildon War Memorial charity (the transferring charity) - this involves making an assessment on the suitability of the receiving charity and whether it is in a better position to administer, manage and maintain the charity asset;
- b. whether the receiving charity has at least one charitable purpose similar to the transferring charity and whether the existing charitable aims and objectives and trusteeship provisions would require amendments in accordance with section 280 of the Charities Act 2011 (as amended), before proceeding with the proposed charity asset transfer; and
- c. whether the people currently benefiting from the charity asset would continue to benefit from it once the proposed charity asset transfer is complete.

6.5 Other considerations:

- a. There is a possibility that Baildon War Memorial could be classed as 'designated land' based on the wording of the Scheme. The meaning of 'designated land' is land that must be used for a specific purpose of the charity according to the document that explains how the land must be used.
- b. There is a possibility that 'permanent endowment' applies based on the wording of the Scheme. The meaning of 'permanent endowment' is property that the charity must keep rather than spend. The charity assets were meant to be held by the charity forever, sometimes to be used in furthering the charity's purposes and to produce an income. The transferring charity has the ability to transfer 'permanent endowment' to the receiving charity if the transferring charity is satisfied that the proposed charity asset transfer will ensure the endowment will meet its original purposes and the receiving charity can and will continue to keep the 'permanent endowment' after the transfer.

The receiving charity is a charitable company and therefore there may be a requirement to appoint the charitable company as trustees of the 'permanent endowment' and 'designated land' and follow the Charity Commission's guidance. 'Designated land' and 'permanent endowment' must not be merged with the receiving charity's general funds and assets and they must continue to be held on their original trusts.

6.6 There is an understanding that the proposed charity asset transfer would not constitute a disposition of land or property held by or in trust for a charity (such as a freehold sale). As a result, compliance with the statutory requirements under sections 117-123 of the Charities Act 2011 (as amended) would not be required.

6.7 In addition, it appears that the ownership title to Baildon War Memorial is not vested in the Council as it is still vested in The Official Custodian for Charities 'land holding' service on behalf of charities by virtue of the Scheme and Charities Acts. This means that there is no obligation on the Council to comply with disposal of land or property

requirements which apply to principal councils under the Local Government Act 1972. Baildon War Memorial is outside the ambit of such Act. Therefore, there is no requirement for the Council to comply with the advertisement process for the disposal of public open space under section 123(2A) of such Act.

- 6.8 There doesn't appear to be a statutory requirement to advertise the proposed charity asset transfer. However, given the political sensitivities and potential publicity with the transfer of trusteeship, it may be considered sensible to allow a period of consultation with the public to give them an opportunity to make representations and raise objections to the proposed charity asset transfer.
- 6.9 There are risks if the receiving charity is appointed as sole corporate trustee of Baildon War Memorial. Namely the previous charity trustees would have no power of future administration and management of the charity and would not be able to demand Baildon War Memorial back in the future.
- 6.10 In view of the factors and complexities, the charities may need authority from the Charity Commission as part of transferring assets. The Charity Commission would have to consider the extent of their involvement with the proposed charity asset transfer, which may involve the making of a Scheme or Order. Further guidance from the Charity Commission would be useful to understand the procedure and implications linked to the proposed charity asset transfer.

7. OTHER IMPLICATIONS

7.1 SUSTAINABILITY IMPLICATIONS

Not applicable

7.2 TACKLING THE CLIMATE EMERGENCY IMPLICATIONS

Not applicable

7.3 COMMUNITY SAFETY IMPLICATIONS

Not applicable

7.4 HUMAN RIGHTS ACT

Not applicable

7.5 TRADE UNION

Not applicable

7.6 WARD IMPLICATIONS

Not applicable

7.7 AREA COMMITTEE LOCALITY PLAN IMPLICATIONS

Not applicable

7.8 IMPLICATIONS FOR CHILDREN AND YOUNG PEOPLE

Not applicable

7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

9.1 Accept the Outcome of the Options Appraisal by Phil Barker Assistant Director of Sport, Culture and Leisure (formerly Culture and Sport)

- The charities outcomes align with those of Bradford Flower Fund
- A current dilapidated property will be brought back into use which aligns with the Charities outcomes
- Removes a ongoing issue with disrepair and dilapidation of a building in the Baildon community
- The charity will loose an asset but one that does not generate an income only a burden.
- The War Memorial will be retained

9.2 Disregard the Outcome of the Options Appraisal by Phil Barker Assistant Director of Sport, Culture and Leisure (formerly Culture and Sport)

- The Charity retains an asset
- The building will be left to continue to fall into further dilapidation
- The building will not be able to used and delivery the outcomes of either charity
- The War Memorial will be retained

10. RECOMMENDATIONS

Recommended -

To accept the Outcome of the Options Appraisal and agree to the transfer of asset to Bradford Flower Homes Development Ltd as the purposes of both charities align. Ensuring they retain the war memorial

11. APPENDICES

Appendix A Options Appraisal Briefing Note to Phil Barker Assistant Director of Sport, Culture and Leisure (formerly Culture and Sport)

Appendix B Outcome of Option Appraisal by Phil Barker Assistant Director of Sport, Culture and Leisure (formerly Culture and Sport)

12. BACKGROUND DOCUMENTS

Decision of Regulatory & Appeals Trustee meeting 16.3.23

40 Browgate Location and images