

Report of the City Solicitor to the meeting of the Regulatory & Appeals Committee (sitting as Trustees) to be held on 30 May 2019

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Subject: Allocation of the proceeds of sale of the former Bingley Science, Arts & Technical Trust School ("the former school"), Morningson Road, Bingley (also known as the Priestthorpe Annex)

Summary

Following the sale of the former school in November 2018 the proceeds of sale are now held in a trust account by the Council as Corporate Trustees.

The Trustees are invited to review the current position and consider the options and recommendations set out below for the allocation of the proceeds of sale which stand at two hundred and twenty six thousand pounds (£226,000.00).

Parveen Akhtar
City Solicitor
Report Contact: Richard Winter
Acting as Solicitor for the Councils as Corporate Trustees
Deputy Team Leader Property Commercial
and Development Law Team
E-mail: richard.winter@bradford.gov.uk

1. SUMMARY

- 1.1 Following the sale of the former school in November 2018 the proceeds of sale are now held in a trust account by the Council as Corporate Trustees.
- 1.2 The former school was built in 1889 under arrangements of its then trustees and in furtherance of the Technical Instruction Act 1889 and in support of the Bingley Improvement Commissioners area known as the Bingley Improvement Area District (BIAD) as established by the Bingley Improvement Acts of 1847 etc. . The former schools land was added to in 1896.
- 1.3 The Trustees are invited to review the current position and consider the options and recommendations set out below for the allocation of the proceeds of sale which stand at two hundred and twenty six thousand pounds (£226,000.00).

2. BACKGROUND HISTORY

- 2.1 The objectives of the Trust are set out in a conveyance dated the 23rd October 1889 between Alfred Sharp Esquire and the trustees of the will of James Sharp Esquire who conveyed the land to the " Trustees of 'the Bingley Science Arts and Technical School' (later referred to as "the former school"). The conveyance sets out various educational objectives of the trust which benefit both children and adults of Bingley.
- 2.2 A conveyance of a second parcel of land (blue land) forming part of the school (see plan at Appendix 1) is dated 29 September 1896 and made between (1) Elizabeth Sharp and Others and (2) The Trustees of 'the Bingley Technical School'. This conveyance also contains terms relating to the operation of the Trust.
- 2.3 The Charitable Trust is not registered with the Charity Commissioners (the Commissioners). The Commissioners however offered advice to the Council's City Solicitor acting for the Trustees on the interpretation of the Trust documents some 8 years ago and more recently in December 2017 on the matter of the grant from HM Treasury to build the school made, presumably, sometime between 1889 and 1896.
- 2.4 Following the conveyance to the Trustees in 1889 and 1896 of the land upon which 'the former School' was built the land and school building many years later vested in Bingley Urban District Council as the former education authority. Subsequently the property vested in the West Riding County Council under the Education Acts.
- 2.5. Ultimately the property became vested in the Council as Trustees on 1st April 1974 by virtue of the Local Government Act 1972. The Council's ownership of the land and former school as Trustees is as shown in its registered title and plan (see Appendix 1 for the plan) ended in November 2019 when the school was sold to a developer who undertook to preserve the foundation stone as requested by the Trustees in September 2019. The Councils Estates and Property Service are charged with the arrangement for the preservation of the stone which is on-going.
- 2.6 Broadly speaking the 1889 conveyance implies that 'the former School' was to be used for the educational benefit of the people (children and adults) of Bingley. Until 2002 the building was used for the provision of education and vocational training.

- 2.7 The building's main use ceased in 2002 but was occupied at least in part until 2006. Since 2006 the building got into a poor state of repair and was no longer been used for the educational purposes of the trust. The building was demolished in April 2019 by the new owners.
- 2.8 It is believed that the property was to appear in an Eddison's auction in April 2014. The guide price was £350,000. However on the advice of the City Solicitor the property was removed from the auction amid concerns that the Council had not complied with process presumably under the Charities Act 2011.
- 2.9 In September 2014 in anticipation of the proposed sale of the building the Councils Estates Service instructed Mark Brearley and Co Chartered Surveyors to prepare a valuation report on behalf of the trustees. The report was dated 10th November 2014 and valued the building as it stood at nil. The report comments in the event that planning permission was granted and the building demolished to permit residential development, the value of the land for development purposes would be in the region of £175,000/£225,000.
- 2.10 Following a meeting of the Trustees in March 2017 two public consultation exercises were made in connection with the disposal of the former school in accordance with the Trustees Act 2000 and Charities Act 2011 and no public objections were received to the proposed disposal.
- 2.11 No further consultation was statutorily required prior to its sale in November 2018 but the trustees have the option to consult further with the public upon how the proceeds of sale may be disposed of. Consultations have already been made with Ward members and the Town Council and various expressions of interest in the proceeds have been made and are mentioned below. Consultations have also been made with the Assistant Director of the Council Parks, Recreation and Culture regarding consideration of the use of the proceeds or part within the Councils library service for Bingley. It is worthy of note the Bingley Town Council has publicised the availability of educational funding in its Spring 2019 newsletter and particularly in a letter to the Priesthorpe Primary school dated 4th December 2018 attached as appendices to this report.

3. OTHER CONSIDERATIONS - REPORTS FOR THE TRUSTEES FROM INDEPENDENT CHARTERED SURVEYORS

- 3.1 A 'Not for Publication' report dated 6th March 2018 from Mark Brearley and Co as the Trust's Chartered Surveyors was presented to the Trustees at a meeting on the 5th April 2018 and the resolution was to seek additional information relating to funding and time scales of interested parties "A" and "D"
- 3.2 In April and May 2018 Mark Brearley and Co on behalf of the Trustees obtained further information from those parties and attached are additional reports dated 24th April and 18th May as Appendix 3 and 4 (not for publication) respectively.
- 3.3 On 21 June 2018 the Trustees accepted the recommendations of the independent chartered surveyor reports i.e. that the Trustees authorise disposal of the property to interested party "D" which was the highest unconditional offer, as set out below:

Resolved -

- (1) That, having sought expressions of interest, the Interim City Solicitor, in consultation with the Assistant Director – Estates and Property, be authorised to dispose of the Priestthorpe Annexe, Morningson Road, Bingley to Party “D”, this party having made the highest unconditional offer.**
- (2) That the Interim City Solicitor (acting on behalf of the Trustees) be authorised to give a valid receipt for the proceeds of sale when the sale completes.**
- (3) That the Interim City Solicitor notifies the Trustees once the sale has completed.**
- (4) That the Interim City Solicitor be requested to seek views from relevant parties, including the Ward Councillors and the Town Council, in respect of the use of the funds arising from the sale, in accordance with the terms of the Trust, and to submit a further report to the Trustees in due course.**

3.4 On the 13 September 2018 the Trustees confirmed the foundation stone should be preserved by the purchasers who agreed in the contract of sale to do this, as set out below:

Resolved –

- (1) That the sale of the Priestthorpe Annexe, Morningson Road, Bingley proceed to Party “I”.**
- (2) That the City Solicitor, as solicitor for the Trustees, be authorised to negotiate with the proposed purchasers of the building to ensure the preservation of the 1888 Foundation stone, as shown in the photograph tabled at the meeting.**

3.5 The proceeds of sale can now be allocated to further the aims of the educational trust created for the benefit of Bingley folk but bearing in mind the building was part government funded in the 1890's and an arrangement is required to preserve the majority of the capital value of the building for example in the investment into another property in Bingley by the trustees..

3.6 Following research by the City Solicitor in March and April 2019 at the West Yorkshire Archive Service based in Bradford (Margaret McMillan Towers) maps of the former Bingley Improvement Area District (BIAD) as established under the Bingley Improvement Acts came to light and are listed as appendices below.

3.7 The City Solicitor advising the Council as Corporate trustees is of the opinion that the allocation of the proceeds of sale should be supportive of existing educational establishments which exist within the former BIAD (see map).

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 It should also be noted following the August 2017 meeting of the Trustees the City Solicitor, as requested, made an outline application on behalf of the Trustees to the Council's Project Appraisal Group (PAG) requesting a grant to the Trust. Complications relating to funding require PAG to make further considerations of this request and thus additional information may be required by the Trustees.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 The Trustees resolved in August 2017 that the Council's City Solicitor acting for the Trustees should seek advice from central government as to repayment of a grant made in the late 1800's from HM Treasury to build the school as mentioned in the trust deed.
- 5.2 The City Solicitor wrote to HM Treasury, the Home Office, the Department of Education and the Charity Commissioners in August, September and October 2017.
- 5.3 In December 2017 lawyers of the Charity Commissioners advised as follows "we have considered the matter. This is a matter for the Trustees of the Charity to decide uponthe Trustees will have to undertake a risk based analysis. They will need to look at all the options which are available to them, and this may include withholding a reasonable proportion of the sale proceeds or purchasing indemnity insurance."
- 5.4 The trustees are advised to consider the preservation of the whole of the capital or some significant portion to purchase of another trust property asset to address the risk raised by the Charity Commissioners.

6. LEGAL APPRAISAL

- 6.1 The trustees in authorising the sale of the building in November 2018 complied with the provisions of the Charities Act 2011. The consent of the Charities Commission was not therefor required.
- 6.2 Given the 1889 and 1896 trust deeds of conveyances set out the trusts objectives any net proceeds of sale must be applied to promote those educational objectives of the Trust for the benefit of the adults and children of Bingley particularly the former Bingley Improvement Area District (BIAD).
- 6.3 Through research by the City Solicitor in March and April 2019 via the West Yorkshire Archive Service (based in Bradford at Margaret McMillan Towers) two maps were found which identify the former Bingley Improvement Area District as established under the Bingley Improvement Acts.
- 6.4 The two maps dated 1864 and 1893 (one highlighted in yellow and the other edged green)) are shown at appendix 1.

- 6.5 In order to best comply with the original intentions of the 1889 trustees it is advisable that the proceeds of sale should be allocated to educational establishments or for educational purposes which exist within the former BIAD and which will benefit as many children and adults of that area as possible. Allocations in this way will also naturally benefit some adults and children who may live outside the BIAD which is inevitable and lawful.
- 6.6 The availability of the educational trust funds due to the sale of the former school has been made known to the residents of Bingley in the local press via the Telegraph and Argus prior to the sale in November 2018 and since in March 2019. The Bingley Town Councils Spring 2019 newsletter also sent information to the public about the proceeds of sale.
- 6.7 Finally the trustees should not lose sight of the reference in the 1889 conveyance to a grant from the then ‘Her Majesties Treasury’ (made around the golden jubilee of Queen Victoria celebrated on 20 June 1887) being potentially repaid if the property is sold. (see above). Advice was obtained from the Charity Commissioners to insure against the risk of recovery of the funding however unlikely 130 years later. An investment in property would also practically insure against that risk.

7. OTHER IMPLICATIONS

None

7.1 EQUALITY & DIVERSITY

In applying the proceeds of sale to further the objectives of the educational trust consideration should be given to equality and diversity.

7.2 SUSTAINABILITY IMPLICATIONS

There are no such planning issues on the allocation of the trust funds.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

There are no such issues on the allocation of the trust funds.

7.4 COMMUNITY SAFETY IMPLICATIONS

The disposal of the property has facilitated the land being brought back into use and addressed the community safety concerns raised in previous reports.

7.5 HUMAN RIGHTS ACT

The trust funds should be allocated as advised above which accordingly will comply with the relevant provisions of the Human Rights Act 1998

7.6 TRADE UNION

None

7.7 WARD IMPLICATIONS

The disposal of the property has facilitated the site being brought back into use which will benefit the amenity of the immediate area. In addition, net sale proceeds will be used for the benefit of the residents connected with the Bingley IAD in accordance with the educational objectives of the Trust.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (For reports to Area Committees only)

Not relevant.

7.9 IMPLICATIONS FOR CORPORATE PARENTING

Children in care of the Council who reside in the Bingley area will benefit from the allocation of the educational trust funds.

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

A Privacy Impact Assessment has not been undertaken. In any event data protection and information security matters arising from the proposal/decision have been taken into account.

8. NOT FOR PUBLICATION DOCUMENTS

NONE

9. OPTIONS

9.1 The options presented to the Trustees are as set out in the table below

Number	Option	Advantages	Disadvantages
Option 1	Invest the whole of the proceeds of sale in existing buildings in former Bingley IAD for educational purposes e.g. a library, the pool or existing schools.	<p>Such a step would preserve the value of the proceeds of sale and provide a permanent community asset for the residents of the former Bingley IAD and surrounding areas.</p> <p>The Trustees have direct control of the asset working with the Council now and in the future and can regulate its continued use for educational purposes.</p> <p>Preserving the capital from the proceeds of sale would</p>	<p>There would be no monies left over to allocate to those organisations that have made expressions of interest for funding for other educational purposes.</p> <p>The Charity Commission may need to be consulted creating delay.</p> <p>Does not save the Council rent on the existing library as it is at a peppercorn rent.</p>

		<p>protect the government grant provided in the 1880s</p> <p>Creates the potential of attract funds from outside of the Council.</p> <p>Ensure the aims and objectives of the original charitable trust.</p>	
Option 2	<p>Invest the major part of the proceeds of sale in an existing Council building in Bingley Town Centre for educational purposes e.g. a library, the pool or schools</p> <p>AND fund some of the organisations providing expressions of interest namely the Head teacher of Myrtle ark school AND</p> <p>The Downs Syndrome Charity</p> <p>The Bingley Town Council</p>	<p>Such a step would preserve the value of the proceeds of sale and provide a permanent community asset for the folk of Bingley IAD and surrounding areas AND also provides funds for the organisations having made expression of interest</p> <p>The Trustees will have direct control of the asset (working in partnership with the Council) now and in the future and can regulate the buildings continued use for educational purposes.</p> <p>Preserving the majority of the capital from the proceeds of sale would protect the government grant provided in the 1880s relating to the building (the land been gifted)</p> <p>Creates the potential of future funding of the building from outside of the Council.</p> <p>Ensure the aims and objectives of the original charitable trust.</p>	<p>The whole of the capital receipts would not be reserved in a trust building.</p> <p>The Charity Commission may need to be consulted creating delay.</p>
Option 3	<p>The proceeds of sale are preserved in cash and the expressions of interest</p>	<p>The expression of interest for funding will be fulfilled furthering the educational purposes of the trust.</p>	<p>The capital asset with diminish over time and ultimately will be dissipated to zero and permanent and on-going trust purposes will not be able to be fulfilled.</p>

	<p>made are satisfied. Future expression of interest for education funding can be considered from time to time</p>		<p>The original capital funding by her majesties treasury will not be preserved and the Council as Corporate trustees may be called upon to repay it without recourse to existing capital. Insurance will need to be taken out to cover this risk at a continuing year on year cost</p>
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10. RECOMMENDATIONS

10.1 Option 2 is recommended and the other options are within the discretion of the Trustees. All options are lawful and in the interests of the adults and children of Bingley as beneficiaries of the educational trust.

11. APPENDICES

Appendix 1 Plans of the former Bingley Improvement Area District 1864 and 1893

Appendix 2 the expression of interest from the head teacher Mrs Sarah Crowther of Myrtle Primary school Bingley dated 21st December 2018

Appendix 3 Letter from Friends of Myrtle Park Primary school dated 15th February 2019 (Mrs Rebecca Whitford)

Appendix 4 Expression of interest from the Downs Syndrome Charity (Wendy Uttley) dated 29th June 2018.

Appendix 5 Proposals from the Bingley Town Council (Cllr Ros Dawson) dated 20th December 2018.

Appendix 6 Letter from Bingley Town Council to the Priesthorpe Primary school dated 4th December 2018

Appendix 7 The Town Councils Spring 2019 Newsletter

Appendix 8 Letter to 3 Bingley Ward members (and circulated to relevant Strategic Directors) dated January 2019.

Appendix 9 Response from Cllr Heseltine Ward Member dated 29th January 2019

Appendix 10 Response from Cllr Pennington Ward Member dated 29th January 2019

Appendix 11. Response from Mr Steve Hartley Strategic Director Place dated 22nd January 2019.

Appendix 12 Response from Assistant Director (Recreation Culture and Leisure) Mr Phil Barker (email from Library Service head Maggie Pedley dated 5th March 2019).

Appendix 13 email from Mrs Mackay re Bingley Pool dated 22nd December 2018 and email from the Friends of Bingley Pool (charity No 1162758) dated 12th April 2019

12. BACKGROUND DOCUMENTS

12.1 Report dated 9th March 2017.

12.2 Report dated 10th August 2017.

12.3 Report dated 5th April 2018.

12.4 Report dated 21st June 2018

12.5 Report dated 13th September 2018

12.6 Site plan of the former school (now demolished)