

# **Report of the City Solicitor to the meeting of the Regulatory & Appeals Committee (sitting as Trustees) to be held on 6<sup>th</sup> February 2020**

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**Subject: THE FORMER BINGLEY SCIENCE, ARTS & TECHNICAL SCHOOL TRUST ("THE FORMER SCHOOL") 1889 AND 1896 TRUST SETTLEMENT.**

## **Summary**

**In May 2019 the Council as corporate trustees (the trustees) made three awards for educational purposes and agreed the remainder of the proceeds of sale of the former school should be held in a trust interest bearing bank account in the name of the Council as Corporate Trustees.**

**The Trustees are invited to review the current position and consider the options and recommendations relating to the following:-**

- (i) Future investment of the trust fund to safeguard its capital value (currently stands at £223,000) and provide an income for future awards for educational purposes.**
- (ii) A constitution and name of the trust fund and its registration with the Charity Commissioners.**

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## **1. SUMMARY**

1.1 In May 2019 the Council as corporate trustees (the trustees) made three awards for educational purposes and agreed the remainder of the proceeds of sale of the former school should be held in a trust interest bearing bank account in the name of the Council as corporate trustees.

1.2 The Trustees are invited to review the current position and consider the options and recommendations relating to the following:-

- (i) Future investment of the trust fund to safeguard its capital value (currently stands at £223,000) and provide an income for future awards for educational purposes.
- (ii) A constitution, the name of the trust fund and its registration with the Charity Commissioners.

## **2. BACKGROUND**

2.1 The former school (demolished March 2019) was built in 1889 under arrangements of the then trustees of the Bingley Science Arts and Technical school) (the trustees being insert names.....) 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. . Additional school land was added in 1896.

2.2 The objectives of the Trust are set out in a conveyance dated the 23<sup>rd</sup> 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 the former BIAD. The trust deeds are attached as Appendix 1 (see Para 11.1 below).

2.3 The minutes and resolutions of the Trustees from the meeting in May 2019 are attached as Appendix 2 (see Para 11.2 below).

2.4 The Charitable Trust is not currently required to be registered with the Charity Commissioners (the Commissioners) as it has an annual income of less than £5000.00. However consideration needs to be given by the trustees to the voluntary registration and future investment of the capital funds (£223,000) to protect its value against inflation (see current income at Para 11.5 below) and in order to produce an income from which future educational awards can be made.

## **3. OTHER CONSIDERATIONS –**

3.1 Awards from the ' trust fund' must be to further the purposes of the educational trust created in 1889 for the benefit of adults and children of the BIAD.

- 3.2 The trustees are asked to consider the adoption of a formal constitution and name for the trust fund going forward.( see draft constitutions at Para 11.3 and 11.4 below)
- 3.3 The trustees are also asked to consider future financial investments of the trust fund either in share market investments funds or a domestic or commercial property to let (see options below and the Charity Commissions advice attached at Para 11.5).
- 3.4 In November 2019 the City Solicitor approached the Head of the West Yorkshire Pension Fund (WYPF) to establish whether or not the financial advisors employed by the WYPF could provide pro bono investment advice to the Council as trustees. This is not possible as the WYPF's financial advisors are insured to advise only the WYPF itself.
- 3.5 However the Head of the WYPF commented that the trustees should consider the appointment of an investment manager from a reputable Financial advisor e.g. CCLA (see background details at Appendix 11.7) which has an excellent steady record over many years. CCLA offer a range of funds and one of a combination should meet the investment objectives of the trustees. The trustees may consider an investment fund with a yield of about 3% or a property fund which has a yield of over 5% both with market related capital value returns.
- 3.6 It is inadvisable to continue to invest in the longer term with the NatWest bank given its saving account interest is 0.7% i.e. less than inflation and the total income to between November 2018 (when the former school was sold) and the 31<sup>st</sup> December 2019 is £1582.00. Given that small income it is recommended that no awards be made in 2020 in order to safeguard the existing capital fund until it has been invested for a period of at least one year.
- 3.7 It should be noted that following the meeting in May 2019 the Bingley Town Council raised concerns (attached as an email appendix at Para 11.8) which in summary requests a clarification of the future use of the trust funds and its investment amongst other matters. The responses to those matters raised are set out in the remainder of paragraph 3 below.
- 3.8 Also in December 2018 the Bingley Grammar school wrote to the Council as trustees making suggestions as to the use of the trust fund and seeking an award. The application for an award was withdrawn given that educational awards are currently limited to the Bingley IAD and Bingley Grammar school is not in that area ( see letter at appendix).
- 3.9 The proposed name of the charitable trust is the "1889 Bingley Educational Trust Fund".
- 3.10 It is proposed to register the trust with the Charity Commissioners.
- 3.11 The criteria for making awards are to further the educational purposes of the original trust i.e. to support adults and children amongst other ways through existing educational establishments and organisations within the former BIAD area.

- 3.12 . A plan and list of existing formal educational establishments in the former BIAD is attached as an appendix at Para 11.9 below.
- 3.13 It is proposed that future annual awards will be made from net income from the fund (keeping the capital intact) taking into account inflation and will be divided between those successful applicants.
- 3.14 Applications for awards will be considered at the May or June meeting of the Regulatory and Appeals Committee sitting as trustees following a report of the trust funds income in April or May each year.
- 3.15 It is proposed the trustees investment strategy is in broad terms as set out above but subject to advice from Investments managers (who have yet to be appointed).and the Councils Estates and Property Service (re possible rental property investments in the Bingley area).
- 3.16 It is still an option to dissipate the whole of the capital by making large capital awards to those educational establishments in the BIAD although such a proposal was rejected in May 2019.
- 3.17 The trustees are also asked to consider the application from Friends of Bingley school to amend the status of the award (to be used to help with the process of asset transfer of Bingley Pool) It should be noted that the process of asset transfer of the Bingley Pool does not sit comfortably with the educational purposes of the trust fund.
- 3.18 The Bingley Town Council also seek approval from the trustees to invite a number representatives from Bingley to assist in the allocation of awards and to consult Bingley Folk as to whether or not a wider boundary beyond the BIAD should be used for the allocation of awards e.g. to include in addition to the Bingley AID, Gilstead, Eldwick, Crossflatts, Micklethwaite and Cottingley or the boundaries of Bingley Parish created in 2016. The Town Council also suggest the venue of the meeting could be in Bingley when it makes awards. The Town Council also request the Council as trustees to consider the transfer of the trust fund to it for future stewardship.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 Since the sale of the Trusts only asset i.e. the former school in November 2018 the funds have been invested as set out in the email and spreadsheet attached at Para 11.8 of the report.
- 4.2 The trustees are invited to consider which alternative types of investment they wish to seek advice upon for the future protection of the capital receipts from sale and income generation for educational awards.
- 4.3 The current savings account in which the trust fund is held has an interest rate of 0.7% below inflation and is unsuitable in the longer term to protect the capital against inflation which is currently running at approximately 2.5 %.

4.4 Given the Council also administer the Baildon Mechanic Institute Trust fund it may be possible in future to make joint financial investments which may produce a higher income to both trust funds.

## **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 upon ....the 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 at present to continue to preserve of the whole of the capital fund by appropriate low risk investment which intends to protect the existing capital but produces an income (by way of rental income or share fund dividends) which can be applied annually to future educational awards.

5.5 At present the trustees are advised there is no need to seek indemnity insurance (against the risk of HM Treasury seeking return of some or its entire grant) to protect the capital of the fund given the proposed investment strategy is to protect the capital value of the fund.

## **6. LEGAL APPRAISAL**

6.1 The Council as Corporate trustees can lawfully make use of the existing trust fund for education purposes within the former Bingley Improvement Area District (BIAD) and which will benefit the children and adults of that area.

6.2 Awards in this way will also naturally benefit some adults and children who may live outside the BIAD which is inevitable and lawful.

6.3 The City Solicitor at the time of registering the trust with the Commissioners will seek advice if the award area can be widened and the cost implications of such and a 'whole of capital' award.

6.4 The current savings account in which the trust fund is held has an interest rate of 0.7% below inflation and is unsuitable in the longer term to protect the capital against inflation which is currently running at approximately 2.5 %.

6.5 The Charity Commissioners have produced guidance which sets out options for

future financial investment and which mentions investments in shares (medium risk) and or properties to let (low risk).

- 6.6 In brief the guidance states Charities invest so that they can further their Charitable aims. They can invest in a number of ways to achieve their aims and there are specific legal duties and decisions making processes attached to each.
- 6.7 If trustees have considered the relevant issues, taken advice where appropriate and reached reasonable decisions they are unlikely to be criticised for the decisions or adopting a particular investment strategy.

## **7. OTHER IMPLICATIONS**

Financial investments can go down as well as up and could reduce the capital value of the trust fund as well as the fees payable for financial advice.

### **7.1 EQUALITY & DIVERSITY**

In applying the Trust Fund to the objectives of the original Trusts educational objectives consideration will be given to equality and diversity.

### **7.2 SUSTAINABILITY IMPLICATIONS**

There are no direct implications but the choice of future awards and investments can take into account sustainability issues.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

There are no direct impacts due to the operation of the educational trust funds but the choice of future awards and investments can take into account such impacts.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

The disposal of the former school facilitated the site being brought back into use thereby resolving the on-going issues and dangers associated with an unoccupied building.

### **7.5 HUMAN RIGHTS ACT**

There are no Human Rights Act 1998 implications on the furthering the educational objectives of the Trust.

### **7.6 TRADE UNION**

None

### **7.7 WARD IMPLICATIONS**

Ward members will be given the opportunity to comment on the proposed use of the Trust funds as should Bingley Town Council.

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

Not relevant.

**7.9 IMPLICATIONS FOR CORPORATE PARENTING**

There are no implications for corporate parenting.

**7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT**

A Privacy Impact Assessment has not been undertaken nor is it required. In any event data protection and information security matters arising from the resolution arising from this report will be borne in mind.

**8. NOT FOR PUBLICATION DOCUMENTS**

The following documents are not for publication (NFP) as they contain information relating to the financial or business affairs of any particular person (Paragraph 3 of the Local Government Act 1972)

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	Make no changes to the current savings account	The arrangement is low risk	The trust funds will be eroded by inflation and will reduce the ability of the trustees to promote the educational objectives of the trust fund.
Option 2	Make changes to the financial investment and seek advice from the Councils Chief Financial Officer and the AD-Estates and Property and where necessary external legal and or financial advisors specifically in low risk investment in shares fund and medium risk properties to let with the aim to protect the capital fund.	The preservation of the capital and the increase of in annual income from the trust fund and allocation of additional future awards for educational purposes.	The risk attached to some investments in shares may be unattractive as investments can rise or fall in value thus eroding the capital funds and the costs of external legal or financial advice must be made from the trust fund itself. Proposed investments both in shares funds and or rental property could lead to the reduction in the value of the overall trust fund if the wrong investments were chosen.
Option 3	To consider joint investments with the	The overall investment income	Investments may fall in value.

	Baildon Mechanics Institute Trust Fund	of both Funds may be increased.	
Option 4	To consider an award(s) which would allocate the whole of the trust fund	The trust fund requires no administration and will have no fees to pay for future financial or property lettings	Indemnity insurance relating to the disposal of the capital would be required.
Option 5	To adopt the constitution of a small charity as attached	Such a constitution is adequate only if the Trust income remains below £ 5000.p.a and there is no intention to register as a charity with the commissioners.	Given the trustees must make financial investments to protect the capital a more detailed constitution as set out at option 5 is advisable
Option 6	To adopt the draft constitution at Para 11.4 below upon registration of the trust with the Charity commissioners	Such a constitution is appropriate if the Trustees intend to make financial investments in rental property and or share funds in the endeavour to produce and income of greater than £5,000.00 per year which would take the trust fund outside the remit of a small charity	The adoption of the more complex constitution could lead to the need for additional meetings of the trustees and a greater use of the Councils legal and democratic and financial resources which are already stretched and additional external costs of financial advisors

## 10. RECOMMENDATIONS

- 10.1 To pursue Options 2, 3 and 6 seeking the appropriate internal and external legal and financial advice where required and in the meantime continue with option 1.
- 10.2 To seek assistance from the Charity Commissioners relating to the registration of the trust as a charity, its future constitution and its geographical area.
- 10.3 The City Solicitor to write to schools and other educational organisations in the BIAD to explain the existence of the trust funds and the option to seek awards in 2021 when the investments of the fund have been settled.
- 10.4 The City Solicitor generally to publicise the existence of the Trust Fund and seek additional donations from the residents and businesses of the Bingley area.
- 10.5 To note the concerns and suggestions of the Bingley Town Council and the

Bingley Grammar school but to keep the current arrangements for the administration of the trust fund and awards with the Council for the present time.

## **11. APPENDICES**

- 11.1 The 1889 and 1896 Trust deeds.
- 11.2 Minutes and resolutions of the meeting of the R&A committee May 2019
- 11.3 Draft constitution for a small charity.
- 11.4 Draft Constitution for a charity with income of more than £5K p.a.
- 11.5 Trust Funds saving account analysis December 2019
- 11.6 Commissioners Guidance Updated August 2016 'Charities and investment matters'.
- 11.7 Email from Bingley Town Council dated 31<sup>st</sup> July 2019.
- 11.8 Letter from Bingley Grammar school dated December 2018.
- 11.9 Location plan and list of educational establishments within the former BIAD.

## **12. BACKGROUND DOCUMENTS**

- 12.1 Report dated 9<sup>th</sup> March 2017.
- 12.2 Report dated 10<sup>th</sup> August 2017.
- 12.3 Report dated 5<sup>th</sup> April 2018.
- 12.4 Report dated 21<sup>st</sup> June 2018
- 12.5 Report dated 13<sup>th</sup> September 2018
- 12.6 Report dated May 2019.