



Review of the decision to make a Scheme for the regulation of the Charity, including a change of purpose

Charity: Victoria Hall, Ealing (Unregistered Charity 4057721)

Reviewer: Joanne Maguire

Date of Review: 03 July 2024

Introduction

1. This is a review of the proposal to make a scheme for the unregistered charity known as Victoria Hall, Ealing (“the Charity”).
2. The issue for the review is whether or not the Charity Commission (‘Commission’) should proceed to make the scheme as currently drafted or whether the said scheme should be further amended.

Background

3. On 6 December 1893, the property, the public hall known as Victoria Hall, was placed in trust for the purpose of meetings, entertainments and other activities listed in the Trust document with any profit generated by use for such purposes to be applied, after deduction of expenses, to any charities in the district of the then Ealing Local Board (the predecessor in title to Ealing Council (‘the Council’)).
4. In May 2017, the Council as the sole corporate trustee of the Charity (“the Trustee”), applied to the Commission for a cy pres scheme on the basis that the Charity was no longer sustainable and had not been for a number of years.
5. On the 12 March 2021 the Commission issued its decision that a cy-pres occasion had arisen under section 62(1) of the Charities Act 2011 (‘the Act’) and issued a scheme pursuant to sections 67 and 69 of the Act (the ‘Original Scheme’).
6. The Original Scheme authorised the property of the Charity to be leased to a company known as Surejogi, the company established by a commercial third party, Mastcraft, to redevelop Town Hall, for 250 years. The arrangement allowed for an up-front premium to be paid to and received by the Charity (after deduction of transactions costs) and was subject to a Community Use protocol, with the repair and maintenance obligations for the property of the Charity to be the responsibility of Surejogi. Under the arrangement, the income from the hiring of the Victoria Hall in furtherance of its charitable purposes, is to go to Surejogi, and the income from hiring of other premises, known as the Queen’s Hall, is to go to the Charity. This arrangement was part of a wider

transaction in which the Council as local authority was disposing of Ealing Town Hall complex.

7. The decision and the Original Scheme were appealed by two local residents (the Appellants) to the First-tier Tribunal (General Regulatory Chamber) Charities (the 'Tribunal') in accordance with the relevant provisions of the Act. The appeal was heard over 3 days in London in early 2023.
8. On the 21 September 2023, the Tribunal issued its Decision in the appeal. In its Decision the Tribunal upheld the Commission's decision that that a cy-pres occasion had arisen. It also upheld the need for a scheme to allow the sale of the Charity's property as part of a wider transaction by the Council. The Tribunal, however, disagreed with some of the specific details of the Original Scheme. The Tribunal remitted it back to the Commission to make a new scheme, in consultation with the Council and the Appellants, and made some findings/observations in the Decision to assist with the revised scheme.
9. In March 2024 the Upper Tribunal heard the Appellant's application for permission to appeal the Decision. In its judgment dated 24 May 2024 the Upper Tribunal refused permission to appeal and upheld the Tribunal's Decision.
10. Following extensive consultation with the Appellants and the Council between October 2023 and March 2024, the Commission issued a revised scheme (the 'Revised Scheme') and instructed the Council to give one month's public notice of the Revised Scheme and invite public representations in accordance with section 88 of the Act.
11. The public notice period closed on the 27 April 2024. And during the said notice period the Commission received a large volume of representations.

Scope of the Decision Review

12. I am appointed on the Commission's behalf to review the representations in accordance with section 88(5) of the Act and the Commission's Decision Review procedures. I am Joanne Maguire, a Senior Case Manager within the Commission's Regulatory Services Directorate. I have not previously been involved in the conduct of the Original Scheme or the Revised Scheme. This decision is the Commission's final decision about the Revised Scheme.
13. In conducting this review I have taken the following into account:
 - a. The legal framework under the Charities Act 2011;
 - b. The public sector Equality Duty;
 - c. The Human Rights Act 1998 and the Economic Growth Duty;
 - d. The representations made in response to the Revised Scheme;

- e. The draft Revised Scheme;
- f. The relevant documents from the Commission's case files including relevant information supplied to the Commission by the Council and others during the course of the case;
- g. The Charity's governing document;
- h. The Commission's Operational Guidance setting out the relevant policy positions, in particular OG 2 Application of Property Cy pres and OG 500 – Schemes;
- i. The Commission's external guidance Changing your charity's governing document (CC36);
- j. further information and clarification provided during the decision review by both the Charity and those making representations.

14. As set out above, both the Tribunal and the Upper Tribunal upheld the Commission's decision that a cy-pres occasion had arisen and that a scheme was necessary. This is clearly noted by the Upper Tribunal at para 70 of the Judgment in which it is stated that:

'It was therefore reasonable for the Tribunal, on the basis of the above findings of fact, to conclude that the legal test for cy-près as set out in s.62 (1) of the Act was met and a scheme was necessary'

15. In conducting my review, I have therefore not considered whether or not a cy pres occasion has arisen nor considered whether the Commission should make a scheme allowing the wider transaction (sale of the Town Hall complex) to proceed. These issues have been considered by two different courts which agreed with the Commission's approach.

16. In addition, I did not consider any allegations of historic mismanagement by the Council. The arguments presented to the Tribunal about historic mismanagement reflect those raised in the representations. As set out in paragraph 43 of the Decision *'It was accepted by all parties that historically there had been failures in the governance and independence of the Charity Trustee'*. The Tribunal made clear in its Decision that:

"the Tribunal notes that certain failings as to how the Charity was previously operated by the Second Respondent as Trustee are not directly addressable in the making of the new Scheme and so not necessary to be mentioned here."

17. I therefore focused my review on the terms of the Revised Scheme so as to assess whether such terms are in line with the Tribunal's recommendations and whether such terms need to be revised in light of the representations received.

Representations received

18. The Commission received 97 representations primarily from individuals who live within the area of benefit of the Charity or from individuals who use or have in the past used the facilities provided by the Charity. The representations made cover eight broad categories:

- a. Allegations of historic mismanagement of Victoria Hall and failure to manage conflicts of interest, including allegations that the Council are unfit to hold the office of charity trustee.
- b. Representations that the Revised Scheme envisages variations to the leases entered into by the Council and the commercial third parties in 2019 but the Revised Scheme does not include provisions to enforce the variation or provide consequences if there is no variation.
- c. Representations that the charitable purposes outlined in the Revised Scheme do not mention Victoria Hall which is the purpose of the Charity.
- d. Representations that there is a dispute over the boundaries of the Charity's property with the view that these should be determined independently.
- e. Representations that the trustees should be independent.
- f. Representations re Community Use Protocol (CUP) – concerns that the Tribunal's Decision required the agreed CUP to be included in the Revised Scheme and not published as an annex after the Scheme is made.
- g. Representations that the Charity won't be financially viable if it doesn't receive the income generated from the use of Victoria Hall and it is therefore being set up to fail.
- h. Representations alleging loss of a community asset – including concerns that the exchange of property for Queens Hall is not appropriate as the alternatives are not suitable and that its availability for public use will be limited with preference given to commercial use.

19. Below I deal with each category of representations and respond to the same.

a. Allegations of historic mismanagement by the Council as sole trustee

20. As set out above, the Commission previously concluded that alleged historic mismanagement by the Council is not relevant to the terms of the new scheme, and this was upheld by the Tribunal in its Decision.

21. Therefore, the representations under this heading are not relevant to the terms of the Revised Scheme. The purpose of the Revised Scheme is to ensure that the future

governance of the Charity safeguards the Charity's interests and manages conflicts of interest going forward.

22. Here I note that the Revised Scheme expressly provides for the appointment of additional independent trustees following completion of the sale of the complex. This will ensure that the Council is no longer the sole trustee and will enable conflicts of interest to be managed properly going forward. In the shorter term, the Revised Scheme provides for independent people to be involved in decision making as part of a Committee of the Executive of the Council.
23. The representations also requested that the Commission takes regulatory action for the alleged historic misconduct. This review is focused on the Revised Scheme and the interests of the charity going forward and not on any historical matters.

b. The Revised Scheme envisages variations to the leases which were entered into by the Council and the commercial third parties and signed in 2019

24. The representations included concerns that the leases were legally binding, and it was not clear how these arrangements could now be amended in the Charity's interest to reflect what is provided in the Revised Scheme.
25. From the Decision and Judgment, it is clear that both the Tribunal and the Upper Tribunal endorsed the wider transaction. In the Judgment, the Upper Tribunal made clear that:

I am satisfied that the FTT [the Tribunal] was entitled to find that there could be no basis at this remove but to endorse the transaction as such, including the land swap agreement, since otherwise no agreement could realistically be achieved to respond to the cy-pres occasion which had arisen.

26. From the documents it is clear that an agreement for lease was completed on 5 November 2019. However, it's conditional – which means that leases / underleases won't be completed unless and until the conditions are fulfilled.
27. The Revised Scheme, particularly Part 2 of the schedule, sets out the requirements in relation the leases. In order for the wider transaction to continue and for the leases to meet the requirements in the Revised Scheme additional negotiations with the commercial third parties may be required. If the requirements set out in the Revised Scheme cannot be satisfied that the trustees cannot rely on the power to continue with the transaction.
28. In the circumstances I am satisfied that the Revised Scheme, as drafted, addresses this concern and there is no need for any changes in that respect.

c. The charitable purposes outlined in the Revised Scheme do not mention Victoria Hall

29. Concerns have also been raised that the purposes of the Charity as set out in clause 3 of the Revised Scheme do not specifically reference Victoria Hall.

30. The primary purpose of the Charity, as reflected in the Trust Deed is to provide facilities for recreational and other leisure-time occupation by members of the public in Ealing and its neighbourhood in the interests of social welfare.

31. As was made clear in the Tribunal's Decision, the purposes of the Charity do not extend to preserving Victoria Hall. The Tribunal held that

"The underlying charitable purpose was not to provide income for preserving Charity property but to apply income from the Charity property for the beneficiaries of the Charity".

32. The Tribunal concluded that:

"For the avoidance of doubt, the Tribunal accepted the change proposed by the First Respondent to the purposes as being appropriate"

33. In the circumstances, and in light of the Tribunal findings referred to above, I am satisfied that the purposes as set out in the Revised Scheme are appropriate and in line with the Tribunal's Decision.

d. Dispute over the boundaries of the Charity Property

34. Several representations raised concerns about the boundaries of the Charity's property expressing the view that there should be an independent assessment of the proportion of land held by the Charity and that this should then be included as a definition in the Revised Scheme.

35. This issue of boundaries was considered by the Tribunal, which found that defining the boundaries of the property is outside the jurisdiction of both the Commission and the Tribunal.

36. It is therefore not possible to include in the Revised Scheme determination of property title issues. Instead, the Revised Scheme provides that the leases must define the boundaries of the property and that such boundaries should be agreed by the Committee of the Executive acting in the best interests of the Charity.

37. When making decisions, trustees must act in accordance with their legal duties in the best interests of the Charity. The legal duties are summarised in CC3 The Essential Trustee and CC27 Its Your Decision. To meet their legal duties, the trustees need to take specialist professional advice where it is appropriate to do so. The Commission has provided this advice to the trustee.

e. Representations that the trustees should be independent

38. Several representations raised concerns that the Revised Scheme does not provide for independent trustees.

39. I note that the Revised Scheme does provide for the appointment of independent trustees following completion of the wider transaction. I further note that the Revised Scheme provides for decisions to be delegated to a Committee of the Executive, as defined in Section 14(2) Local Government Act 2000, to have delegated powers to make decisions in the best interest of the Charity until the wider transaction is completed and independent trustees appointed.
40. A Committee of the Executive is one of the mechanisms by which a local authority can make decisions. A Committee of the Executive, unlike other local authority committees, enables people independent from the Council to form the quorum and make decisions on the local authority's behalf.
41. In the circumstances I am satisfied that the Revised Scheme deals with this concern properly and provides a roadmap for the Charity for persons independent of the Council to become trustees to ensure that conflicts of interest do not affect future decisions for the Charity.

f. Community Use Protocol (CUP)

42. The representations in relation to the CUP are that it should form part of the Revised Scheme rather than be annexed when the Scheme is made. The majority of the representations received about the CUP were directed at whether or not the Charity's property would be available for use by the public in furtherance of the charitable purposes (ie for public recreation).
43. I note that the CUP has been agreed and will be annexed to the Revised Scheme. I also note that the Revised Scheme itself makes it clear that the Victoria Hall can only be used in accordance with its charitable objects (with the exception of 10 days a year). In the circumstances I am satisfied that the Revised Scheme will ensure that the Hall will only be used for its charitable objects and therefore these concerns are addressed in the Revised Scheme.

g. Income from Victoria Hall

44. A number of representations express concern that the Charity won't be financially viable if it doesn't receive the income generated from the use of Victoria Hall and it is therefore being set up to fail.
45. I note that the Revised Scheme provides for the Charity to receive a Premium upon completion of the wider transaction. I further note that the Revised Scheme expressly provides for a mechanism for the Charity to earn income from the use of the Charity property in addition to the said Premium. In its application for the Original Scheme, the Trustee made a case that the overall arrangement with the commercial third parties was in the best interests of the Charity. The Tribunal did not seek to overturn the arrangement.

Findings - Other

46. On reviewing the Scheme I have noted a number of potential anomalies and typographical errors that will be clarified and corrected before the Scheme is finalised.

- a. There are a number of definitions set out in the preamble to the Revised Scheme which are used throughout the Scheme but are not included in the definitions (Clause 1). As the preamble is not binding and the definitions are important for clarity, these should be included in Clause 1.
- b. Clause 1 (Additional Definitions) – reference to “Independent Trustees” should clarify that it means “individuals who are not members or employees of the Council and are not connected . . .”
- c. Clause 1 (Additional Definitions) – reference to the “sub Lease” should be amended to “sub under lease” to be consistent with the terms used elsewhere in the Revised Scheme.
- d. Clauses 3(2) and 3(4) refer to the power in clause 4 in relation to the land swap. Clause 4 is about the trustees. This is a typographical error and will be amended to refer to clause 6.
- e. Clause 3(4) also refers to Queens Hall being designated property. It will only become designated property if the land swap pursuant to the power provided in clause 6 goes ahead. The wording of the clause will be amended to reflect this.
- f. Clause 4(3) refers to the membership of the committee and includes “five persons independent of the Council”. It is not clear whether independent has the same definition as for “Independent Trustees”. It does, and this will be clarified for the avoidance of doubt.
- g. Clause 4(7) – there is a word missing in the second sentence which should read “In selecting individuals for appointment as Independent Trustees, the Committee must ensure there is a proper and transparent recruitment process . . .”
- h. Clause 6 refers to the property swap but whilst the property being swapped is described as “the property described in part 3 of the schedule to this Scheme”, Queens Hall is named. Queens Hall is however, described in Part 4 of the schedule to the Scheme so for consistency, clause 6 should read:

“The Existing Trustee or the trustees may within six months from the date of the Scheme enter into an agreement to exchange the property described in Part 3 of the schedule to this Scheme (known as Princes Hall) with the property described in Part 4 of the schedule to this Scheme (known as Queens Hall) provided that the Existing Trustee or the trustees

are satisfied that the terms of the agreement to exchange are in the best interests of the Charity.”

- i. In Part 1 of the schedule to the Revised Scheme the paragraph relating to Premium for Victoria Hall it sets out that the premium should be calculated based on an assessment of the floor-space of Victoria Hall and the property described in Part 3 of the schedule to the Scheme, but the right-hand column refers only to Victoria Hall which could lead to confusion. This followed the drafting of the Original Scheme but will need to be clarified in the Revised Scheme.
- j. In Part 1 of the schedule to the Revised Scheme relating to the “Parties to the Leases” there are some grammatical changes to the final paragraph which should read: The Leases encompass those parts of the Town Hall that are not held on charitable trust for the Charity and the property held on trust for the Charity (Victoria Hall and Queen’s Hall).
- k. In Parts 3 and 4 of the schedule to the Revised Scheme it refers to the property on the plan at Annex 2. As the first Annex is A, the second Annex should be “B”.

Public law

47. The Commission has considered the public sector equality duty set out in the Equalities Act 2010. There are no issues about protected characteristics arising as part of this case.
48. The Commission has a duty not to interfere with the rights protected by the Human Rights Act 1998 except to the extent that any such interference is legitimate and proportionate. No rights are engaged as part of this review.
49. The Commission must have regard to the Economic Growth Duty which requires the Commission to consider the importance for the promotion of economic growth of exercising the regulatory function in a way which ensures that regulatory action is taken only when it is needed, and any action taken is proportionate. The Trustee could not enter into the arrangement without the Commission’s authority to authorise the application of funds cy pres and the conflict of interest.

Conclusion

50. I am therefore satisfied, subject to the amendments mentioned in this decision review, that the Revised Scheme is in line with the Tribunal Decision and the Upper Tribunal Judgment. I am further satisfied that the Revised Scheme deal with and addresses the vast majority of the representations and concerns received as set out above.
51. I am satisfied that the trustee’s decision to apply for a cy-pres scheme and propose the application of property as now set out in the Revised Scheme is a decision which

falls within the range of reasonable decision the trustee(s) could make in the Charity's best interest. The purpose of the Revised Scheme is to ensure that the Charity is in the best place to continue to operate in the years to come.

52. In the circumstances the Revised Scheme should amended as per above and then sealed. The Revised Scheme will then be the governing document of the Charity.