

**FRIENDS OF THE VICTORIA HALL**

**SUBMISSION TO THE CHARITY COMMISSION**

**IN RELATION TO**

**THE DRAFT SCHEME FOR VICTORIA HALL, EALING**

**(CASE NUMBER 4057721)**

**3<sup>rd</sup> January 2020**

## 1. REPRESENTATIONS

- 1.1 These representations are made by the Friends of Victoria Hall in relation to the draft scheme published by the Charity Commission in relation to the charity known as Victoria Hall, Ealing (case number 4057721).
- 1.2 We have sought advice and input from charity specialist lawyers, Bates Wells, in relation to these representations.
- 1.3 We have attached a bundle of documents in support of these representations with an index. We cross refer in these representations to items within this bundle using the numbering and letters attributed to each item in the index for ease of reference.

## 2. ABOUT THE FRIENDS OF THE VICTORIA HALL

- 2.1 The Friends of the Victoria Hall (“**FoVH**”) is a voluntary association which was established to secure the preservation and protection of the historic Victoria Hall, Prince’s Hall and associated rooms for the benefit of local inhabitants.
- 2.2 The FoVH has significant local support, demonstrating the serious concern the charity’s beneficiary class, the inhabitants of Ealing, have at the Council’s plans to change the objects of the Trust and break up and dispose of the charity’s property and the egregious way in which the Council has ignored the interests of the Trust over its own interests and dismissed the representations of the local community.
- 2.3 FoVH was established by seven local community organisations: Central Ealing Neighbourhood Forum, Campaign for an Ealing Performance & Arts Centre, Central Ealing Residents’ Association, Ealing Arts & Leisure, Ealing Civic Society, Save Ealing’s Centre, and West Ealing Neighbours, which together have a membership of well over 2,000. It has since been joined by other residents’ and community organisations as well as individuals, representing a wide range of the beneficiaries of the Trust as both past and potential users of the Halls and their ancillary spaces. Despite only being recently established (in order to take over the cause from previous petitioners, Save Ealing’s Centre, which is one of its founders), FoVH already has a broad and significant local support base all of whom object to the Council’s plans and will continue to fight to oppose them.
- 2.4 The Association has been recognised as a charity by HMRC (under number ZD04507).

## 3. ABOUT THE CHARITY, VICTORIA HALL, EALING

- 3.1 As the Charity Commission is aware, the charity, Victoria Hall, Ealing (the “**Trust**”) was established by a declaration of trust dated 6<sup>th</sup> November 1893 (*see Declaration of Trust over Victoria Hall dated 6 November 1893, which is marked document A1*). The Council is the sole corporate trustee.
- 3.2 The property of the Trust comprises the Victoria Hall, Prince’s Hall and related rooms and offices as well as later added property, as further described below. In these representations, references to the “**Halls**” are to the Victoria Hall, Prince’s Hall and related rooms and offices and other property.
- 3.3 The Halls were constructed in 1888 funded by public subscription in celebration of Queen Victoria’s golden jubilee. The Halls were designed by renowned Ealing architect Charles Jones. A particularly fine feature are its rose windows at each end of the Hall. (See further background

in “*Victoria Hall, Ealing: history and extent*” – a background paper prepared by Friends of the Victoria Hall and submitted to the Victoria Hall Trustees meeting on 26 September 2019, marked as document H36 and Friends of Victoria Hall statement of evidence to the Charity Commission, marked as document H35).

- 3.4 The current objects (the “**Current Objects**”) of the Trust provide for the retention of the Halls and:
- 3.4.1 The letting of the Halls (and any of them) for the purposes of meetings, entertainments, balls, bazaars and other gatherings whether social or political and to charge for such use at the Trustee’s discretion;
- 3.4.2 To apply the proceeds for repair and maintenance of the Halls and associated costs and
- 3.4.3 To apply the surplus income “*between and among any Charities or Philanthropic or Charitable Institutions in....Ealing*” i.e. with surplus income to be used to support local charities.
- 3.5 It is accepted by the Charity Commission that these objects are charitable and have been recognised as charitable by the Commission as far back as the 1950s (notwithstanding that the Council has sought to rely on arguments to the contrary and has failed to register it on the Register of Charities).
- 3.6 There are two crucial aspects to the Current Objects:
- 3.6.1 The provision of these Halls is an essential aspect of the Current Objects, the Halls being specie land. The objects provide for the provision of these Halls, not any hall. The Halls are of the type of charity identified in *Oldham Borough Council v Attorney General (1993) Ch 210* where their particular property is intrinsic to the purposes. The Halls must be retained and cannot be disposed of. Any disposal of the Halls can only be carried out if the Current Objects are amended by cy-pres scheme.
- 3.6.2 The Halls can be provided to the community with or without charge.
- 3.7 As the provision of the Halls is integral to the Current Objects, we understand that the Charity Commission accepts that any disposal of the Halls requires a change to the Current Objects by cy-pres scheme in relation to which a cy-pres occasion must be demonstrated.
- 3.8 Unfortunately, the fact that a disposal could only be achieved by cy-pres scheme was not previously recognised by the Council and this was not therefore reflected either in its public consultations or its decision-making. The consultations were grossly misleading as a result and the Council’s decisions were flawed as further described below.
- 3.9 In any event, having reviewed the papers and the draft scheme, our view is that the case for a cy-pres occasion has not been made out, for the reasons explained in Section 8 below. The terms of the draft cy-pres scheme are also inappropriate (see Section 7 below) and the process for making a scheme is undermined by failures to follow fair and proper process (see Sections 9 and 10).
4. **THE THREE HALLS: THE VICTORIA HALL, PRINCE’S HALL (AND QUEEN’S HALL)**
- 4.1 Ealing Council’s own venue hire website [www.ealingvenues.co.uk](http://www.ealingvenues.co.uk) describes the three halls (the Victoria Hall and Prince’s Hall owned by the Trust and the Queen’s Hall owned by the Council) as follows:

#### 4.2 **The Victoria Hall:**

4.3 Designed by Ealing's Victorian Engineer and Surveyor, Charles Jones, to commemorate Queen Victoria's Golden Jubilee, this grand Gothic Revival style hall with its hammerbeam roof effect is approached via an impressive ceremonial staircase. This room is the largest in the Town Hall and can accommodate 450 guests theatre style or 250 guests seated at round tables. With a sprung wooden floor and atmospheric lighting, it is a fantastic venue for dancing with a large stage available for a band or disco.

4.4 The Victoria Hall can be used in conjunction with the [Prince's Hall](#) for a range of events. Whether hosting a conference in the Victoria Hall and using the Prince's Hall as a lunch venue or using the Prince's hall for pre-dinner drinks before 'wowing' your guests as they walk into the Victoria Hall, the options available at Ealing Town Hall make it the perfect location to hold your event. The two rooms also work well for segregated events.

#### 4.5 **The Prince's Hall:**

4.6 A contemporary space designed with three split levels allowing for a range of events. A fantastic venue for a drinks reception for up to 200 guests either as a stand-alone event or prior to dinner in the Victoria Hall, the Prince's Hall also offers a versatile space for trade shows or breakout sessions.

4.7 Easily transformed with soft lighting, this venue is the perfect blank canvas for a wide range of events and a fabulous space for after dinner dancing.

#### 4.8 **The Queen's Hall:**

4.9 Situated at the East end of Ealing Town Hall, and in close proximity to the Registrars Suite, the Queen's Hall offers a multipurpose space for up to 150 guests theatre style.

4.10 With a small servery adjacent to the room and an ideal area for delegate registration, the Queen's Hall offers a self-contained area for community meetings, smaller social celebrations or workshops.

4.11 As can be seen from the Council's own descriptions of the three halls, the Victoria Hall is the flagship hall. The Prince's Hall and Victoria Hall can be used together to allow a broader range of functions. The Queen's Hall is very much considered by the Council to be a lesser space, suitable only for small functions.

### 5. **THE DEAL WITH MASTCRAFT**

5.1 Under the proposed deal with Mastcraft (the "**Transaction**"), we understand that, in summary:

5.1.1 The Town Hall together with the entirety of the Halls (Victoria Hall, Prince's Hall and associated offices and rooms) i.e. all of the Trust's current property, will be disposed of under a 250 year lease to Surejogi, a new company established and guaranteed by Mastcraft for this venture.

5.1.2 Surejogi will develop part of the Town Hall, including the part comprising of the Halls, into a luxury hotel and part will be sub-let back to the Council for its own use;

5.1.3 The Victoria Hall will be significantly altered and reduced in size as part of the redevelopment including moving the east rose window and the loss of backstage spaces. The Prince's Hall,

associated offices and rooms and other charity property will be destroyed as these spaces will be converted into parts of the hotel including the hotel gym and swimming pool;

- 5.1.4 The scheme itself does not provide for or refer to a sub-lease back to the Trust of the Victoria Hall although this was suggested to be part of the Transaction in the Council's papers (see *papers attached to agenda for meeting of General Purposes Committee at H34*);
- 5.1.5 Covenants in the lease will provide that Surejogi may only use the Victoria Hall in accordance with the proposed new objects of the Trust;
- 5.1.6 However, notwithstanding this, the lease will provide for only very limited provision of community use of the Victoria Hall by Surejogi at reduced community rates in accordance with a separate Community Use Protocol. It would be up to the Council (as trustee of the Trust or otherwise) to monitor and enforce the covenants and use which it would have little incentive to do;
- 5.1.7 Any income generated from letting or use of the Victoria Hall, Prince's Hall and associated charity property will belong to Surejogi, a commercial hotel operator;
- 5.1.8 The Trust will receive a share of the lease premium (the total due in respect of the whole Town Hall being £2.5M) and annual rental income (the total due in respect of the whole Town Hall being £250,000 subject to rent review) in respect of the Victoria Hall (although the Trust will apparently receive nothing in respect of the associated offices and rooms and we raise concerns about the valuation attributed to the Trust's interest below);
- 5.1.9 In addition, in order to facilitate the deal, the Prince's Hall will be swapped with the Queen's Hall currently owned by the Council. The Queen's Hall will also be part of the disposal to Surejogi. Although not referred to in the scheme, it is understood from Council papers that part of the Town Hall, including the Queen's Hall, will be sub-let back to the Council as part of the Transaction (see *papers attached to agenda for meeting of General Purposes Committee at H34*). The papers (*H34*) also suggest that the Council will then grant an under-lease to the Trust in respect of the Queen's Hall for a peppercorn rent and the terms of the sublease will require the Queen's Hall to be used in accordance with the Community Use Protocol. It is not clear why the Queen's Hall is not to be sub-let direct to the (Council as trustee of the) Trust.
- 5.2 The Transaction has been presented as being beneficial to the Trust on the basis that responsibility for preservation and maintenance of the Halls will pass to Surejogi and community use of the Victoria Hall (and Queen's Hall in place of the Prince's Hall) will be secured, but in fact this is not the case, as outlined below.
- 5.3 In essence, under the Transaction:
- 5.3.1 All of the Trust's property will be disposed of;
- 5.3.2 Some very limited community use of the Victoria Hall (and Queen's Hall) will be secured by covenant.
- 5.3.3 The charity's property will be broken up and the Prince's Hall replaced by a mere under-lease in the Queen's Hall.
- 5.3.4 The Halls will no longer be retained and used wholly for the objects of the Trust resulting in the loss of community property.
- 5.3.5 There is no requirement to use the premium/share of any leasehold income to replace the Halls.

## 6. BENEFICIARY OPPOSITION TO THE DRAFT SCHEME AND HISTORY OF ENGAGEMENT

- 6.1 The charity's beneficiary class, Ealing's inhabitants, have made use of and enjoyed the Halls for the Trust's objects for the past 125 years. Over the years, the Halls have been used for a huge array of community activities, from concerts to religious celebrations, mental health services and ballroom and ballet classes among other things, providing a vital community space for beneficiaries.
- 6.2 Sadly, during this time, however, the Council lost its way, failing for decades to treat the Halls as charity property and consequently failing to fulfil even its basic charity law duties as trustee and culminating in its decision to dispose of the whole Town Hall, including the charity's property, to Mastcraft, initially with no regard to and latterly (having discovered the existence of the Trust) without proper regard to the interests of the Trust. While it has been presented that the Transaction will secure the future community use of the charity property, unfortunately it is abundantly clear that this is not the case, as outlined below. Rather, the proposals will result in loss of historic specie property by the charity and vastly reduced community access. This is of serious concern to the inhabitants of Ealing, including those who are represented by FoVH, who object to the proposed cy-pres scheme.
- 6.3 In terms of the history to this matter which is set out more fully in the supporting documents (see *history at document H39*), the Council first began to consider options in relation to the Town Hall, including the Halls, back in 2000 (although of course without giving any consideration to the Halls being charity property). Throughout the whole of this period to date, there has been significant local engagement. Every step of the way, local groups have put forward alternatives for the charity property and objections to the Council's plans, but they have largely been ignored.
- 6.4 Back in 2000, the Town Hall was considered as a possible multi-functional arts centre with support from Ealing Arts and Leisure ("EA&L", now an FoVH member) which would have had obvious benefits for the local area, however this was not progressed.
- 6.5 Later, in 2010, again without any regard to the charity property, the Council became concerned at the increasing cost of the Town Hall and started to look at options with EA&L, but its proposals were not taken forward.
- 6.6 In 2014 the Council determined to dispose of the whole Town Hall, including the charity property, but again without awareness of the existence of the Trust or consideration of its interests. In 2015 it commenced a tendering exercise by advertising for development partners in the commercial press. Local groups including EA&L were not notified or invited to bid. In 2015, after a 2 stage selection process, the Council resolved to dispose of the entire Town Hall including the charity property to Mastcraft.
- 6.7 The Council then discovered that the Halls were charity property after having already agreed to dispose of the Town Halls, including the charity property, to Mastcraft. The Council therefore approached the Charity Commission for assistance in order to get its deal with Mastcraft through. In particular, the Council sought a cy-pres scheme to allow them to change the charitable objects of the charity and asked for permission to dispose of the Halls. As a result of Charity Commission direction, the Council held two flawed consultations in late 2017/early 2018 on the draft scheme (as further detailed below).
- 6.8 Despite the egregiously misleading nature of the consultations, the Council received a staggering number of submissions (over 275), including submissions from local groups

representing many more people, demonstrating the significant local engagement, concern and objection to the proposals. Nevertheless, the Council discounted these representations and misrepresented the outcome of the consultations to the Charity Commission.

- 6.9 Having discovered the existence of the Trust, local groups then also put forward bids under the Asset of Community Value regime. However, these were not seriously considered by the Council, which would have required it to actively engage and work with the interested bidders to develop plans. Those bidding under the ACV were hamstrung as the Council had not attempted to identify the charity assets including property or provide accounts for the Trust. It was also clear to the bidders that their proposals would have no prospect of success as the Council was already committed to the Mastcraft deal and was not prepared to work with those making bids and so the bids were not genuinely considered.
- 6.10 The local community has also voiced its concerns through two online petitions, as detailed in the Appendix. The first attracted 1,798 supporters. A second petition addressed to the Charity Commission at <https://you.38degrees.org.uk/petitions/save-the-victoria-hall-1> was launched on 11 December 2019 to 'Stop Ealing Council disposing of property owned and governed by a charitable trust.' In less than three weeks (as at 30th December), the petition has been signed by 1,400 people expressing the same strong views opposing the Council's plans and seeking protection of the Halls for the benefit of the community.
- 6.11 As the Charity Commission is aware, the local inhabitants have also raised numerous objections direct with the Charity Commission, through Save Ealing's Centre.
- 6.12 However, the objections of local inhabitants have largely been ignored and this has culminated in the Charity Commission's decision to make a draft scheme.
- 6.13 We now submit these representations in which we set out our fundamental objections to the proposed scheme for the reasons set out below. We trust that, having had the opportunity to consider these representations, the Charity Commission will now withdraw the draft scheme and work to seek an alternative solution for the Halls which secure its long term future as a charity.

## 7. COMMENTS ON THE DRAFT SCHEME

7.1 We have serious concerns about the scheme in general and its contents specifically.

### 7.2 Overview of the draft scheme

7.3 In summary, the draft scheme sets out new purposes and authorises the swap of the Prince's Hall for the Queen's Hall and the disposal of the rest of the Trust's property being the Victoria Hall and associated offices and rooms.

7.4 The scheme is expressed to entirely replace the previous objects of the Trust set out in the original Declaration of Trust. To this end, the draft scheme is intended to constitute the new (and only) governing document for the Trust going forward.

7.5 Clause 3 of the scheme provides for new objects as follows:

*The objects of the charity are*

*(1) To promote the benefit of the beneficiaries [inhabitants of Ealing and the surrounding area] by the provision of facilities for recreation or other leisure time occupation...with the object of improving the conditions of life of the beneficiaries.*

*(2) Subject to clause 4 of this scheme, the property listed in part 1 of the schedule to this scheme must be retained by the charity for use for the object at subclause (1).*

*(3) If and insofar as the income of the charity cannot be applied towards the object above, it may be applied in furthering general charitable purposes for the benefit of the beneficiaries [inhabitants of Ealing and the surrounding area].*

- 7.6 The objects are wide and broadly reflect those of a village hall or community centre.
- 7.7 The property listed in part 1 of the schedule is the Victoria Hall only. It does not include its associated rooms and offices and other property (or the Prince's Hall/Queen's Hall).
- 7.8 While clause 4 appears, at first glance, to require the Council to retain the Victoria Hall, clause 4 then goes on to expressly permit the Council to dispose of the Victoria Hall on the terms of the 250 year lease to Surejogi.
- 7.9 Clause 4 also authorises the Council to swap the charity's property, the Prince's Hall, with the Queen's Hall *provided the Council is satisfied that the terms of the exchange are in the interests of the charity.*
- 7.10 We set out in this section 7 why we do not think the terms of the scheme are in the interests of the Trust. We set out in section 8 below why we do not think the Charity Commission has power to make this scheme at all, as the case for a cy-pres occasion has not been made out.
- 7.11 **Summary of issues with the draft scheme**
- 7.12 Notwithstanding the failure to demonstrate that a cy-pres occasion exists, we believe that the draft scheme is in any event fundamentally flawed as:
- 7.12.1 The provisions are not in the interests of the Trust; and
- 7.12.2 The draft contains a number of provisions which are not suitable; and
- 7.12.3 The draft contains a number of omissions.
- 7.13 Overall, it is difficult to see how the provisions of the draft scheme can be in the interests of the Trust;
- 7.13.1 While clause 3(2), 4(1) and Part 2 of the scheme purport to preserve the Victoria Hall for the objects, the historic Victoria Hall is disposed of on a 250 year lease to a commercial hotel provider (so is effectively lost to charity) and the provisions designed to preserve the Hall for the new purposes (the covenant in the lease and associated community use provisions set out in the separate Community Use Protocol) are wholly inadequate and, in reality, do not preserve the property for the purposes at all.
- 7.13.2 It would be up to the Council as landlord to monitor and enforce these covenants and community use, which it would have little incentive to do;
- 7.13.3 The responsibility for provision of the use of the Victoria Hall in furtherance of the new objects would fall to Surejogi, a commercial hotel operator, which is wholly unsuitable;
- 7.13.4 The income from letting the Victoria Hall (and Prince's Hall and other charity property) from community use or otherwise is lost to charity and becomes the property of Surejogi (a

commercial company) whose main motivation and indeed duty to its shareholders in operating the Victoria Hall will surely be to secure as much income as possible;

- 7.13.5 Sureroji is only obliged to provide community use of the Victoria Hall in accordance with the Community Use Protocol which Surejogi itself, agrees with the Council. These provisions are wholly inadequate and significantly narrower than the proposed new objects of the Trust and Surejogi can give preference to commercial/full paying users; there is no reservation of use by beneficiaries;
- 7.13.6 Surejogi (a commercial hotel operator) and the Council are charged with establishing a working group, to monitor use of the Victoria Hall in accordance with the Community Use Protocol. This group *may* co-opt a representative of the community, but there is no obligation for them to do so. This is an entirely unsuitable arrangement with inadequate protection for the charity;
- 7.13.7 Part 2 of the scheme provides that the Victoria Hall will be available for community use 355 days of the year but this is not consistent with the Community Use Protocol which makes clear that community use will be much more limited;
- 7.13.8 Part 2 provides that qualifying groups will be able to book the Victoria Hall for community uses at reasonable and affordable rates, but in fact the provisions set out in the Community Use Protocol provide for only a small number of community groups to be able to benefit and a large number of current users of the Victoria Hall would be excluded;
- 7.13.9 Consequently, the Victoria Hall is to all intents and purposes lost to charity;
- 7.13.10 Meanwhile, the Prince's Hall is disposed of and replaced by very limited proprietary interest under an under-lease in a separate and unsuitable replacement hall, the Queen's Hall. The scheme makes no reference to the underlease and does not set out even basic requirements for its contents;
- 7.13.11 Out of the Trust's current extensive charity property, only the Queen's Hall will remain charity property (but with the Trust holding a very limited property interest) – a significantly smaller space generating significantly lower income than the Victoria Hall and a smaller hall generating less income than the Prince's Hall; so the provision of charitable facilities for the inhabitants of Ealing will have been significantly reduced;
- 7.13.12 The Council is not obliged to retain the Queen's Hall for the objects of the Trust (which means that the Council could decide to terminate the under-lease at any time) and the Council is apparently only obliged to provide the Queen's Hall in accordance with the Community Use Protocol, which is much narrower than the objects;
- 7.13.13 In any event, the Trust's property is not correctly identified in the scheme (or indeed outside of it) by the Council. This carries a number of implications (incorrect value attributed to the Trust's property and incorrect consideration of the ongoing viability of the Halls among other things) and undermines the case for the scheme;
- 7.13.14 The Council is not obliged to use the Trust's share of the proceeds of the disposal to provide replacement or additional facilities, although it is not clear why and it is not clear how the Council does intend to apply the premium;
- 7.13.15 The terms of disposal including valuations of the Trust's interest are left to the Council, which is conflicted, and the copy valuation report obtained by the Council shows serious shortcomings (compounded by the ongoing failure to properly identify the Trust's property);

- 7.13.16 The draft scheme contains no mechanism for good governance or management of the Council's conflict of interest (such as a committee which includes sufficient independent members to form a quorum) or any trustee benefit provisions despite the Council's historic failings in this regard;
- 7.14 The Council has not properly considered alternative options for preserving the Halls for the Trust due to false assumptions about the Trust such as the extent of its property and interests.
- 7.15 The outcome of the scheme is that all of the Trust's property is disposed of. The Trust currently holds substantial property (two halls and associated rooms and offices) which must be retained for charitable use under the present Deed. Under the scheme, all of the specie land has gone. Consequently, the inhabitants of Ealing will have lost a valuable historic asset and vital community hall space.
- 7.16 Whilst we understand that the Charity Commission (and Council) seek to argue that the Victoria Hall remains secured for charitable use, as outlined above, this is clearly not the case either under the covenant or the Community Use Protocol provisions. It is also difficult to see how use on this basis could effectively be enforced by the Council as trustee – it appears unlikely that failure to permit community use could be a trigger event for termination of the head lease.
- 7.17 Furthermore, the property will no longer be owned or controlled by the Trust and Halls will be exploited by Surejogi primarily for maximum income (with only limited community use preserved under the Community Use Protocol with no priority given to or reserved hours for community users and no incentive for Surejogi to encourage community use given the reduced rates which would apply) and the income generated from lettings will cease to belong to the charity. The Trust's share of any lease income due to the Council for the wider Town Hall will be limited.
- 7.18 Turning to certain specific points in more detail:
- 7.19 **None of the charity's property is properly protected for use for the objects**
- 7.20 The new primary object no longer requires provision of a specific hall or a hall at all. Clause 3(1) merely refers to the provision of facilities in general terms.
- 7.21 The scheme expressly authorises the disposal of the Victoria Hall (as well as the Prince's Hall and associated offices and rooms).
- 7.22 The scheme expressly authorises the Council to swap the Trust's property, the Prince's Hall, with the Queen's Hall. However, although the Prince's Hall (and other charity property) is currently required to be retained and used for the Current Objects under the trusts of the Trust as functional permanent endowment, the scheme does not require the Queen's Hall to be retained for the new objects (clause 3(2) only relates to the Victoria Hall, which ceases to belong to the Trust under clause 4(1)).
- 7.23 In relation to the Queen's Hall, although it would be the only charity property still within the ownership of the Trust (albeit under an underlease), there is no requirement for the Queen's Hall to be retained and used for the new objects (see further at 7.29). It appears that this replacement property will not be held as functional permanent endowment. It is not clear why this is the case.
- 7.24 In relation to the Victoria Hall, while the lease will contain a covenant that Surejogi must only use the Victoria Hall in accordance with the new charitable objects set out in the draft scheme, this is ineffective and not equivalent to charitable use as (a) such use is only secured by way of covenant which it would be for the Council to enforce with little incentive to do so, (b) only a very

limited group of community users will be entitled to discounted rates under the Community Use Protocol, leaving the remainder obliged to pay whatever rates Surejogi sees fit.

- 7.25 Surejogi is a commercial entity not a charity and so is not subject to the same charity law duties as the Trust and will obviously want to exploit the Victoria Hall for maximum profit. Surejogi would be able to set its own rates for letting the Victoria Hall (other than in relation to the very limited community use secured by the Community Use Protocol) which would obviously be inconsistent with charitable use. While the Trust could not properly charge fees which would be too high for its beneficiaries to afford (see for example <https://www.gov.uk/government/publications/public-benefit-running-a-charity-pb2/public-benefit-running-a-charity#annex-c-charging-for-services> at Annex C in relation to “Charges that the poor cannot afford” and the Charity Commission’s guidance on Village Halls and Community Centres RS9 under the heading “*Licensing and Hiring of Facilities*”), the same would not be the case for Surejogi. Surejogi will be able to exploit the charity property for maximum income, preferring to lease the premises for costly weddings and events rather than community use. As noted below, community use is not secured – there is no preference for community use bookings. Surejogi can choose to prioritise commercial/full paying parties to community users and seek to maximise its income from the “charity” property.
- 7.26 Furthermore, under Part 2 of the scheme, it appears that the Queen’s Hall will also only be provided for the objects in accordance with the Community Use Protocol. It is not clear why this is so and why the Queen’s Hall cannot be held for the provision of the objects generally. The Community Use Protocol is much more narrowly constrained than the objects and excludes a number of current community users.
- 7.27 Furthermore, the scheme contains no provisions to protect the Trust in relation to the terms of the under-lease of the Queen’s Hall to be held by the Trust (and we have queried below whether such an under-lease would be valid or effective). Obviously if the under-lease can be terminated at any time by the Council or Surejogi, it is ineffective to secure the Queen’s Hall for the Trust. The scheme also does not prescribe the length of the under-lease - it is not clear whether the under-lease would endure for the full 250 duration of the head lease. These are matters that need to be clarified through examination of the lease. There has been no opportunity to do this.
- 7.28 That being so, given that the Victoria Hall and all the other Trust property is disposed of (and community use provisions are inadequate) and the Queen’s Hall is not required to be retained (and the scheme sets out no requirements for the underlease), the Trust is left with no property which is actually protected for use for the objects and the community.
- 7.29 **Inappropriate Hall swap**
- 7.30 The scheme expressly authorises the Council to swap the charity’s freehold asset, the Prince’s Hall, with the Queen’s Hall.
- 7.31 The Queen’s Hall is not a suitable replacement hall and is in no way equivalent to the Prince’s Hall (see *paragraph 4.4, Bates Wells letter of 29 Jan 2019, marked as document A3*). In particular:
- 7.31.1 The Council has attempted to present the hall swap as being for the benefit of the Trust; this is not the case. The Council first sought consent from the Charity Commission to the land swap by email of 29 October 2018, and stated that the reason for the swap was that Queen’s Hall was a better space than Prince’s Hall. However, the reality is that plans dated well over a year prior to this correspondence (May 2017 – see s106 agreement at E26) clearly show the developer’s

intention to demolish the Prince's Hall and turn it into the swimming pool and fitness centre for hotel guests.

- 7.31.2 The disposal of the Prince's Hall was always contemplated by the Council as part of the original disposal. The plans attached to Mastcraft's planning application dated March 2018 clearly show the destruction of the Prince's Hall and its conversion into a hotel gym and swimming pool. The hall swap was presented to the Charity Commission by the Council's solicitors Browne Jacobson as being proposed as being in the interests of the Trust, but really it was because the Council had only recently realised that the Prince's Hall was charity property and it had already been included in Mastcraft's designs. To this end, the Council had to conjure up arguments as to why the Queen's Hall would be more suitable.
- 7.31.3 In other words, the Trustee sought consent to the disposal of the Prince's Hall solely in order to give effect to its own deal with Mastcraft and to facilitate the developer's proposals to demolish existing property held by the Trust, and did not propose the land swap with the interests of the Trust in mind.
- 7.31.4 The Council made the case for this by asserting, through its solicitors, that the Queen's Hall was "*generally a more impressive room*" than the Prince's Hall. Yet, if that were so, it is somewhat surprising as:
- (a) the Council rented out the Prince's Hall at an hourly rate of £240 peak rate, with the Queen's Hall let at only £180 per hour peak rate. That is a significant difference and demonstrates clearly that the Council most certainly does not regard the Queen's Hall as more impressive or a better property for the charity;
  - (b) the Council's own description of the two halls on its website [www.ealingvenues.co.uk](http://www.ealingvenues.co.uk) (see Section 4 above) clearly shows that the Council regards the Queen's Hall as a lesser space;
  - (c) we also note that the s119 report attributes a higher value to the Prince's Hall (see below).
- 7.31.5 In reality, we are concerned that the Council is having regard to its own interests and its desire not to rock the Mastcraft deal by its realisation that the Prince's Hall belonged to the charity.
- 7.31.6 Furthermore, the Prince's Hall and Victoria Hall can currently be hired together (and often are) which generates a higher income. Under the current plans, that will no longer be possible.
- 7.31.7 The Queen's Hall is not equivalent to the Prince's Hall and is an unsuitable replacement as it has poor acoustics, does not have its own dedicated toilet facilities and is at the far end of the Town Hall within the complex, with no separate entrance to the street.
- 7.31.8 The Trust's current freehold interest would be replaced by a very limited interest under an under-lease and we have noted concerns about the terms of the under-lease (in relation to which the scheme is silent) above. In this regard, we understand from the Council's papers that the intention is that Queen's Hall will be held by the Council on sub-lease from Surejogi and will provide an under-lease to the Trust (*see page 19 of 152 of the General Purposes Committee report, marked as document H34*). However, this is not referenced in the scheme. As we understand it, legally the Council cannot enter into a lease with itself in another capacity. Firstly, we understand that it does not legally work (see for example *Rye v Rye (1962) AC 496*) and, secondly, entering into the under-lease would be a conflict of interest, so such a sub-lease

would fail. If there is no under-lease, the Trust would have no proprietary interest in the Queen's Hall at all.

7.32 The Queen's Hall and Prince's Hall are not equivalent in value and this is borne out by the Council's surveyors' report.

7.32.1 Having had sight of the surveyors' report which purports to be compliance with s119 Charities Act 2011, (see copy report annexed to GPC report dated 26 Sept 2019 at H34) we have identified a number of findings within this report that entirely undermine the conclusion that the Queen's Hall is a superior replacement for the Prince's Hall. The surveyor's report notes that:

- (a) 50% of lettings of Victoria Hall also incorporate a letting of Prince's Hall, and that concurrent lettings are unusual and generally avoided – para 3.7.1, page 14;
- (b) Queen's Hall (2,304 sq ft) is only 57.7% the size of Prince's Hall (3,991 sq ft) – para 3.3;
- (c) Queen's Hall (150 people max) can only accommodate 68.2% of the number of attendees as Prince's Hall (220 people max) – para 3.7.2;
- (d) Prince's Hall is considered to be the most contemporary function space in the Town Hall – paragraph 3.7.2, page 14;
- (e) Queen's Hall peak private hourly rate (£180) is only 75% that of Prince's Hall peak private hourly rate (£240) – para 3.7.4, page 15;
- (f) Queen's Hall assessed gross annual revenue (£182,910) is only 86% that of Prince's Hall (£211,770) – para 6.1.2, page 27;
- (g) Queen's Hall market value (£545,000) is 92% that of Prince's Hall (£590,000) – para 6.1.2, page 29 (although, given the much higher rental income of the Prince's Hall, one would expect a greater difference);
- (h) “...Queen's Hall is considered to not represent a financial equivalent to Prince's Hall...” – para 6.3.1, page 31.

7.32.2 Additionally, the timing of the proposed land swap will result in the Council receiving a much higher share of the premium and rental income due from Surejogi than it would otherwise do. The proposal is to allocate both on the basis of total floor area. As the hall swap will happen first, the Trust's share of the premium and rent will be based on only the (reduced) floor area of the Victoria Hall (and it is not clear whether this will also include the Queen's Hall) while the hall swap will result in the transfer to the Trust of a much smaller hall. In fact it would be in the interests of the Trust for any hall swap to happen after the disposal so that the Trust would be entitled to a higher share of the premium. The current deal is structured to favour the Council over the Trust and is not in the interests of the Trust.

7.33 Considering the above findings, it is difficult to reach the conclusion that Queen's Hall is an equivalent replacement for Prince's Hall, let alone a superior or even suitable replacement both in terms of the qualities of the Queen's Hall and the nature of the Trust's proposed interest in it or that the Council genuinely believes that it is a suitable replacement.

7.34 To this end, it does not appear that the proposed hall swap is remotely in the interests of the Trust.

7.35 **Terms do not secure charitable use - Inadequate community use provisions**

7.36 The scheme provides that the terms of the lease must provide for use of the Victoria Hall and Queen's Hall in accordance with a Community Use Protocol.

7.37 In particular, the draft scheme provides that:

*"The lease will place a user covenant on Surejogi which will prohibit it from using the Victoria Hall other than in accordance with the [new] objects..."*

**This use of the Victoria Hall (as well as the Queen's Hall...) will be governed by the terms of a 'Community Use Protocol' contained in the lease."** [our emphasis added]

7.38 The wording of the scheme, as a result of the underlined word above, appears to indicate that the use of the Victoria Hall and Queen's Hall under its new objects will be solely provided under the Community Use Protocol. In other words, the current rights of the beneficiaries to use the Victoria Hall (and Queen's Hall in place of the Prince's Hall) will only be provided under the very narrow Community Use Protocol and are not protected by the broader user covenant.

7.39 Under these arrangements, the Victoria Hall (and Queen's Hall in place of the Prince's Hall) is not being preserved for the new objects at all. The provisions of the draft scheme do not secure the furtherance of the Trust's current objects (as discussed in paragraph 4.6 of our January 2019 letter at A3) or proposed new objects, the detail being left to the separate Community Use Protocol which sits outside of the scheme and is agreed by the Council and Surejogi (two conflicted parties and one of them a commercial hotel operator).

7.40 Most surprisingly, the draft scheme provides that it is for the Trust (i.e. the Council), the Council and Surejogi (a commercial hotel operator) to agree the Community Use Protocol. It is difficult to see what incentive there could be for Surejogi to agree generous provisions once the lease has been granted and Surejogi, as a commercial hotel operator, will obviously want to secure as limited provision as possible for community use. Furthermore, there is no mechanism for ensuring community use if the Community Use Protocol cannot be agreed or if Surejogi breaches it. It is unlikely that this would be a trigger event for the Council to terminate the lease.

7.41 In the events which have happened, the Protocol has merely been appended to a s.106 Agreement (see E26) between the Council (as Local Planning Authority) and the developer. The Council as trustee of the Trust is not a party to the s.106 agreement or the Protocol (nor is it properly defined within the Protocol).

7.42 To the contrary, the Community Benefits Statement setting out the principles for community use in the s.106 Agreement is no more than a condition of Mastcraft's planning consent. Responsibility for enforcing the condition rests with the Council's planning enforcement team. Enforcing such a complex agreement would be legally complex and expensive. There is no assurance that the enforcement team will have the incentive to act against Mastcraft were any breach in the s.106 reported to them and even if it did, it is unlikely to have either the expertise or the resources to bring a successful case. Making the Community Use Protocol dependent on the s.106 Agreement will add further and unwarranted jeopardy to the Trust and is entirely unsuitable and contrary to the interests of the Trust.

7.43 In addition, the Community Use Protocol was created without any input from the local community i.e. the current beneficiaries.

- 7.44 The Community Use Protocol sets out the terms on which Surejogi will provide community use of the Victoria Hall in accordance with the new objects of the Trust. In other words, Surejogi is charged with providing charitable use of the Victoria Hall. Surejogi is a commercial hotel operator whose main motivation will be maximum income for its shareholders and is entirely unsuitable to be charged with securing charitable use of the charity property. In this regard, we note that no part of the bidding process for the Town Hall was concerned with seeking a developer who was suitable to operate charity property. As far as we are aware, the Council has not considered Mastcraft/Surejogi's suitability for this role. We note that inspection of [Mastcraft's accounts on Companies House \(see https://beta.companieshouse.gov.uk/company/01845796\)](https://beta.companieshouse.gov.uk/company/01845796) raises further questions as to how robust Mastcraft and its associated company Surejogi's delivery would be. Their last available accounts are for 2017. Those for 2018 were due 31<sup>st</sup> July 2019 but they have not been filed and are now nearly 6 months overdue, a situation that has happened several times in recent years.
- 7.45 The contents of the Community Use Protocol are also unsuitable (see below). As the Community Use Protocol is so narrowly framed, this is significantly narrower than the objects of the Trust. It is particularly surprising that the use of the Queen's Hall – which is supposedly retained by the Trust – is also to be restricted in this way.
- 7.46 Insufficient protections are included in the scheme itself. This is particularly concerning given how narrowly the Community Use Protocol is drafted and the way in which it is intended to operate.
- 7.47 We have reviewed the provisions relating to community use (as set out in the Community Use Protocol within the s.106 Agreement entered into by the Council and Surejogi (see *S.106 Agreement at E26*), and also referred to within the draft scheme) and find these to be entirely inadequate and restrictive. The Community Use Eligibility Criteria are unnecessarily complex and significantly limit the availability of the Victoria Hall to the beneficiary class.
- 7.48 In particular:
- 7.48.1 The Community Use Protocol only provides for "Qualifying Community Groups" to make bookings for community use during specified Community Use Periods at discounted community use rates;
- 7.48.2 There are no restrictions in the scheme to prevent Surejogi from only accepting commercial bookings or accepting those in priority to community use bookings. There is no requirement that a minimum percentage of the total lettings are to be to community groups;
- 7.48.3 The draft scheme provides that Victoria Hall will be made available for community use bookings for "*up to 355 days*" per year. This leaves it open to Surejogi and the Council to agree a much lower number of days – as low as they like. This in fact has occurred; the Community Use Protocol provides no priority for community use;
- 7.48.4 The Community Use Protocol agreed by the Council and Surejogi provides for community bookings on weekdays only, which means there are no more than 253 days per day when it will be possible to obtain reduced rates;
- 7.48.5 Despite the draft scheme's reference to "guaranteed reserved hours", this is not reflected in the Community Use Protocol. It is only possible to make community use bookings that qualify for the reduced rate during limited periods (peak hours are expressly excluded), and no reduced rate is available for Victoria Hall (and potentially also Queen's Hall) after 5pm on Fridays or at all during

weekends and bank holidays and, again, community use bookings are given no priority over other bookings;

7.48.6 The draft scheme states that “qualifying community groups” will be able to book the Victoria Hall for community uses at reasonable and affordable rates (with provision for multiple booking discounts). In this way, the draft scheme attempts to secure community use in accordance with the new objects. However, the Community Use Protocol significantly restricts this by specifying an extremely narrow definition of “Qualifying Community Group”. A user will only qualify if it is based wholly or mainly in Ealing and is a registered charity or, if not a registered charity, at least 60% of its members live in Ealing and its constitution provides for service to residents of Ealing and it operates as a non-profit organisation. Many existing users and eligible beneficiaries would not meet the new definition of Qualifying Community Group e.g.:

- (a) An individual Ealing resident wishing to hire the Charity’s property individually for a use within the Charity’s purposes (as not a “group”);
- (b) A local Brownies group (such units are not separately registered charities in their own right and do not have a “constitution”);
- (c) A national charity (i.e. not based wholly or predominantly in Ealing) putting on an event for the benefit of Ealing residents;
- (d) A concert by a touring choir/orchestra or individual performer (not a local community group);

7.48.7 While discounted rates are also offered for certain exercise classes, again the provisions are restrictive, for example bookings must be for over 2 hours;

7.48.8 The Current Objects enable the Halls to be provided to beneficiaries without charge which might be utilised, for example, if the Halls are to be used for a charity fundraiser for a local cause. Alternatively, the Halls could be provided at a lower discounted rate for certain users. Neither of these options will be possible any longer – there will be no flexibility to maximise charitable use of the property;

7.48.9 There is no requirement for the Community Use Working Group to include any members of the community (merely the ability to “co-opt” them, should the Council and developer choose);

7.48.10 Any lettings income will be retained by the developer rather than due to the Trust to use for charitable purposes and we have noted above that the developer will not be subject to charity law duties when setting charges and will be primarily motivated by profit. While the Trust will receive a proportion of the annual rent paid by the developer in respect of the long lease, this will be a fraction of the total lettings income generated by the underlying charitable assets which would otherwise be due directly to the Trust; and

7.48.11 The “Additional Community Rooms” definition can be revised without any consultation with the community or the Community Use Working Group.

7.49 Drawing this together, it is clear that the Victoria Hall is not being preserved for the charity as the Council presents and the Victoria Hall will become primarily the property of a commercial hotel operator with minimal community use.

7.50 **The scheme does not correctly identify the Trust’s property**

- 7.51 The scheme does not correctly identify the Trust's property. Obviously it is crucial that the Trust property is correctly identified before the scheme is made given that it affects the nature of and terms of the disposal and valuation and whether the disposal is in the interests of the Trust (and whether alternative options are available to the Trust as discussed below). We do not see how the Charity Commission can properly proceed to make the scheme until this has been addressed.
- 7.52 The original Declaration of Trust at A1 expressly identifies the Trust's property as comprising the "[Victoria] Hall and the Rooms and Offices".
- 7.53 Despite this clear language, the Council still persists in treating the Trust property as comprised solely of the Victoria Hall and Prince's Hall and the Charity Commission has accepted this and reflected it in the draft scheme.
- 7.54 In the Council's report to the General Purposes Committee dated 15 March 2018 at C10 the Council acknowledged that the Trust assets included "ancillary rooms" and concluded that the Trust owned the toilets adjacent to the Prince's Hall (somewhat bizarre given the reference in the Declaration of Trust to rooms and offices). The plan of the Trust's property submitted to the Charity Commission also clearly show the room identified on the plan as "1.04 Artists Room" as belonging to the Trust (which will be demolished under Surejogi's plans).
- 7.55 However, in the Council's report of 15 January 2019 to the General Purposes Committee, the Council now identifies only "the Victoria Hall and the Prince's Hall" as belonging to the Charity. The report provides that "*The 1893 Declaration refers to the "Victoria Hall and the rooms and offices belonging thereto" but....not possible to be exactly sure which areas of the Town Hall are the subject of the Declaration of Trust. ....the Council is proceeding on the basis that the Trust property comprises the Victoria Hall and the Prince's Hall....As a result of the inclusion of the Prince's Hall within the scope of the Trust, the application to the CC also includes a proposed "land swap" of the Prince's Hall and the Queen's Hall as part of the disposal to Mastcraft*".
- 7.56 This is a pretty extraordinary conclusion. Why would the original Declaration of Trust refer to rooms and offices if there were none?
- 7.57 As you are aware, we carried out our own research and identified a much larger area as belonging to the Trust. We have produced plans which show the wider area in the plans appended to document H36. This includes, among other rooms, the Artists Rooms and the cloakrooms/toilets.
- 7.58 Our research also shows that the Trust funded extensions to the Halls in 1899, extending the extent of the Trust property (see H35)
- 7.59 Furthermore, our research proves that the Trust also has shared ownership of and/or easements over the Town Hall's entrance hall and that the Council has been aware of this for decades.
- 7.59.1 The Trust owns a joint interest in the Town Hall entrance and/or it has easements through it. From the outset, the two Halls (Victoria Hall and Prince's Hall) have stood attached to but separate from the Town Hall apart from the first floor (main) entrance to the Victoria Hall, which is accessed by a grand staircase through the main building. It was clearly always intended that this would be a shared facility, and in 1902 the Trustees contributed to the cost of a portico to the ground floor street entrance (see extract from minutes of committee of Victoria Hall Trust dated 17 March 1902 at H40. In particular, the minutes record that "*the Committee*

*recommended... that a cheque for £60 be drawn in favour of the Borough of Ealing in payment of the Trustees proportion of the cost of the portico at the front entrance of the Hall".*

- 7.59.2 It is clearly extremely unlikely that the Trust – which at that stage was operating properly by committee – would have contributed to the entrance without having a proprietary interest in it or the benefit of easements.
- 7.60 That the Trust has an interest in the entrance to the Town Hall was even acknowledged by the Council back in 1935 (see document *H41*).
- 7.61 We would urge the Charity Commission to urgently carry out a full review of the historic Trust papers in order to properly identify the Trust assets.
- 7.62 **Terms of disposal – valuation of the Trust's interest**
- 7.63 By the scheme, the Council is authorised to dispose of the Victoria Hall as part of the wider disposal of the Town Hall in relation to which consideration will be £2.5 million plus an annual payment of £250,000 (subject to rent reviews). We understand that the Council has already entered into the agreement for lease conditional on obtaining the Charity Commission scheme. We are most surprised at the low level of premium to be obtained for the Town Hall complex and low rent.
- 7.64 The draft scheme authorises the Council to enter into the lease but does not specify the proportion of lease premium or rent that should be paid to the Trust. By the scheme, it is left to the Council to determine the share of the premium and rent due to the Trust in respect of the Victoria Hall, by seeking a s119 qualified surveyor's report. The scheme does not even contain basic requirements for the contents of the under-lease of the Queen's Hall (and Victoria Hall) or terms of disposal.
- 7.65 Furthermore, the Council is empowered to determine the terms of exchange of the Prince's Hall with the Queen's Hall and to satisfy itself that the terms are in the interests of the Trust even though the Council is in a position of significant conflict of interest, as it is swapping its own asset with that of the Trust. No mechanism for management of that conflict is set out. We are aware that the Council purports to manage that conflict by delegating authority to exercise the trustee functions to its General Purposes Committee, but this committee is made up solely of members of the Council's governing body and is not independent.
- 7.66 At no point has the whole Transaction (disposal of all the Trust's property, the hall swap and sub-leases back) been considered by qualified surveyors acting exclusively for the Trust. There is nothing to support that the deal is in the interests of or on terms which are the best that can be obtained for the Trust.
- 7.67 The agreement to lease has already been entered into but no proper s119 report has been obtained as outlined below. We understand that the Council has obtained a report from Sanderson Weatherall *at H34* which purports to be made under s119. Having had sight of the valuation, we have serious concerns that the Council is empowered to determine the terms of disposal and exchange. The surveyor's report obtained by the Trustee is insufficient as a valuation of the charity property.
- 7.68 The report does not appear to be sufficient or to meet the requirements of s119 and associated regulations. The report does not, in particular, appear to adequately address s6 of The Charities (Qualified Surveyors) Regulations as follows:

6. Advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including—

*(a) where appropriate, a recommendation that the land should be divided for the purposes of the disposition;*

*(b) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the manner in which the proposed disposition should be advertised;*

*(c) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice (for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it); and*

*(d) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be.*

- 7.69 The report is predicated on the deal with Mastcraft going ahead. The report does not value the whole transaction for the Trust itself (i.e. the disposal of all of the Trust property, the proposed hall swap, the sub-lease of Victoria Hall and the sub-underlease of Queen's Hall). Obviously the Trust's property – the Halls – is worth more together. Yet no attempt it made to value the Trust's property as a whole.
- 7.70 The report does not address the manner of disposing of the Victoria Hall and Queen's Hall and associated property for the best terms at all. Section 119 requires the report to address whether the terms of disposition are the best that can be obtained for the charity – the report from Sanderson Weatherall does no such thing and also considers no alternative dispositions. It does not advise on appropriate terms of disposal of the Trust's property as a whole or the Victoria Hall.
- 7.71 In relation to valuing the Victoria Hall, the report is predicated on the Transaction going ahead it simply advises as to a suitable method of apportioning the premium between the Council and Trust (which it advises could be done on square footage – though note that the full extent of the Trust's property was not considered). There is no consideration of the value of the Victoria Hall itself and whether the disposal is on suitable terms. There is no consideration of the terms of any sub-lease back of the Victoria Hall (if there is to be one, as suggested in Council papers).
- 7.72 The valuation is also inadequate in relation to the proposed hall swap.
- 7.73 The report merely values separately the Queen's Hall and Prince's Hall; and considers whether the total lease premium for the entire Town Hall site is considered to be market value (see *paragraph 6.3.1(a), page 31 of the surveyor's report*) and advises on a method for apportioning a share of rent and premium in respect of the Victoria Hall. This is wholly inadequate as a basis for valuation and does not allow the Trustee to properly consider whether the transaction as a whole is in the best interests of the Trust. The report simply does not meet with s119 Charities Act 2011 and related requirements.
- 7.74 Furthermore, in relation to the hall swap, while the report places a higher value on the Prince's Hall than the Queen's Hall, it does not seem to contemplate that the Council should pay over the difference to the Trust. The rationale given is that the Trust will receive a share of the rent (although this is received on the Victoria Hall not Prince's Hall) and the relinquishing of

maintenance obligations for the Victoria Hall which is entirely irrelevant. This is clearly wrong as the Council will also receive a similar benefit in respect of its own property.

7.75 In addition, the Transaction provides for the disposal of the Queen's Hall and sub-lease/under-lease back, yet the report does not consider or give a value for that disposal, which would obviously carry with it a proportion of the premium and rent from Surejogi. The terms of the sub-lease and under-lease are obviously crucial in this regard (e.g. termination provisions, length of under-lease), but the valuers have not considered them – see below.

7.76 Furthermore, the report does not correctly identify the Trust's property and therefore does not value all of the Trust's property and interests (such as easements).

7.77 Additionally, the report:

7.77.1 specifically notes that it makes no attempt to value Victoria Hall itself, and only values Queen's Hall and Prince's Hall separately and therefore also omits that the Victoria Hall and Prince's Hall carry higher value together (as they are currently often let together) - paragraph 6.3.1, page 31;

7.77.2 notes that the surveyors have made no attempt to carry out any due diligence to identify all the property belonging to the Trust. Instead, the surveyors relied on plans provided by Council even while recognising that the original Declaration of Trust referred to ancillary rooms and offices, which are not currently included within the valuation (paragraph 3.6.1, page 13);

7.77.3 does not advise on disposal of Queen's Hall (following the land swap (paragraph 2.3));

7.77.4 has not considered terms of the various leases and under-leases (paragraph 6.3.1, page 31); and

7.77.5 makes no recommendations as to manner of disposal (e.g.) whether to advertise as that is not seen to be relevant (page 30/31, paragraph 6.3).

7.77.6 Given that the surveyor's report does not make any attempt to provide a valuation for the deal/the disposal of the Halls as a whole (which are to be disposed of in their entirety) or the Victoria Hall alone, or to consider the terms of any sub-lease/under-lease of the Queen's Hall (or Victoria Hall) or to consider the best method of disposing of the Halls or to assess the proper basis upon which the Trust proposes to apportion the premium and rental (which it is proposed is carried out simply on the flawed floor area as calculated by the Trustee) or to correctly identify the Trust's property and interests, it is difficult to understand how the surveyor's report can be seen to fulfil the requirements set out in Part 2 of the draft scheme. Any attempt by the Council to dispose of the Halls on the basis of this advice would appear therefore to be contrary to the interests of the Trust.

7.77.7 Furthermore, and surprisingly, we note that Sanderson Weatherall appear to have acted for Mastcraft in the past (see e.g. <https://www.realla.co.uk/details/4311392>).

7.78 **No requirement to replace the Halls**

7.79 Although the scheme provides for the disposal of the Victoria Hall, Prince's Hall and associated rooms and offices and payment of part of the premium to the Trust and there is no requirement to retain and provide the Queen's Hall for the new objects, the Council is not obliged to use the proceeds to acquire replacement property. It is unclear why it is considered to be in the interests of the charity to dispose of the charity's specie property without replacement.

- 7.80 Furthermore, on the basis that the Victoria Hall is functional permanent endowment, the Trust's share of the premium would surely be held as investment permanent endowment i.e. the share of premium must be invested and only the income arising on investment can be spent. Yet there is no reference to this in the draft scheme (contrast for example, the scheme settled by the Tribunal in *Maidment and Ryan v Charity Commission (2009)* at clause 9(2)).
- 7.81 **The scheme does not put in place appropriate governance arrangements**
- 7.82 It seems irrefutable that the Trust has not been properly managed by the Council. The Council has not operated the Trust as a charity. The Council has not historically managed its conflict of interest. The Council purports to manage its conflict of interest now by acting as trustee through the General Purposes Committee (see *Report to Full Council dated 19<sup>th</sup> December 2017 at C9*), but that committee contains no independent committee members and is drawn entirely from the Council.
- 7.83 The Charity Commission's own Operational Guidance <https://ogs.charitycommission.gov.uk/g056a001.aspx> notes that:
- In most circumstances, the interests of the charity are likely to be better served by constituting a body of individual trustees to administer it.*
- 7.84 Given that the Council has not managed its inherent conflict of interest to date, we are most surprised that the draft scheme, which entirely replaces the current governing document of the Trust, does not put in place appropriate governance arrangements and, in particular we believe that, in line with the Charity Commission's own guidance, the scheme should:
- 7.84.1 Replace the Council as trustee with independent trustees drawn from the local community and with the appropriate mix of skills, experience and independence necessary to properly run the Trust; or
- 7.84.2 Require the operation of the Trust to be delegated to a Committee of the Council to which independent committee members are co-opted from the local community sufficient to form a quorum to take decisions if the Council members are conflicted.
- 7.85 We note the sharp contrast with the scheme considered by the Tribunal in *Sparrow and Others v Charity Commission. (2014)*.
- 7.86 We would also suggest that all trustees/committee members should be required to sign a code of conduct and that express conflict of interest and trustee benefit provisions should be enshrined in the scheme.
- 7.87 We would also suggest that the governance arrangements should include an element of accountability to the local community, such as an annual general meeting in relation to the Trust at which the trustees will report on activities during the course of the year.
- 7.88 **The scheme does not put in place appropriate safeguards**
- 7.89 The scheme does not include suitable safeguards to protect the interests of the Trust. For example:
- 7.89.1 The scheme contains nothing in relation to the proposed sub-leases/under-lease e.g. principal terms such as termination events, duration;

7.89.2 It is understood from the papers that there will be an initial rent of £250,000 for the whole Town Hall complex (*see papers attached to agenda for meeting of General Purposes Committee at H34*) with rent reviews. It is not clear why the draft scheme contains no safeguards for the Trust in this regard e.g. requiring consideration of its interests under this review as a term of the lease.

7.90 Drawing all of the above together, the terms of the draft scheme contain a number of unsuitable provisions and omissions and overall cannot be regarded as in the interests of Trust.

## 8. THE CASE FOR A SCHEME HAS NOT LEGALLY BEEN MADE OUT – THE CHARITY COMMISSION THEREFORE DOES NOT HAVE POWER TO MAKE THE SCHEME

### 8.1 The legal test is not met

8.2 As the Charity Commission is aware, in order to make a cy-pres scheme, the applicant charity must demonstrate that a “cy-pres occasion” has occurred. These are set out in s62 Charities Act 2011.

8.3 The special nature of the Halls, which is specie land, means that any disposal would also require a cy-pres occasion. The requirement to retain and provide the Halls is not a mere administrative provision, and permitting disposal fundamentally alters the objects (*see para 4.2 of Bates Wells letter dated 29 January 2019, marked as document A3*). We understand that the Charity Commission accepts this.

8.4 We understand that Council is relying on the occasion set out in s62(1)(e) “*the original purposes, in whole or in part, have, since they were laid down...(iii) ceased...to provide a suitable and effective method of using the property...regard being had to the appropriate considerations.*” The appropriate considerations are (i) the spirit of the gift and (ii) the social and economic circumstances prevailing at the time of the proposed scheme. In arguing that this cy-pres occasion has arisen, the Council relies wholly or primarily on the following factors: that the cost of running and maintaining the Halls exceeds the income from lettings (leading the Council, as trustee, to subsidise the Halls which it is not willing to continue to do), and that the Halls are not independently viable separate from the Town Hall due to the lack of suitable entrances. Both of these claims are incorrect and are based on false grounds by the Council as outlined below.

8.5 Given that the Council’s grounds for seeking the cy-pres scheme are wrong, it is clear that the case that a cy-pres occasion has arisen to permit disposal of the Halls has not been made out.

### 8.6 Original scheme application and consultation were carried out on a flawed basis and cannot be remedied retrospectively

8.7 As the Charity Commission is aware, back in 2014 (*see Cabinet minutes dated 21<sup>st</sup> October 2014 at C6*), the Council decided to dispose of the Town Hall complex (including the Trust property) for the following reasons:

8.7.1 To deliver a sustainable long term future for the Town Hall;

8.7.2 The buildings are in need of repair and refurbishment and – with current funding pressures on the Council – it is unaffordable for the Council to refurbish the buildings.

8.8 The Council shortlisted developers at this early stage.

- 8.9 At that point in time, the Council was not aware of the existence of the Trust and so its interests were not considered at all. The Council set out 4 strategic objectives for the disposal (see C6) none of which reflected or considered the interests of the Trust.
- 8.10 The Council approved the grant of a lease to Mastcraft in relation to the Town Hall (including the Trust property) in July 2016 (*see report to full Council dated 19<sup>th</sup> December 2017 at E9*). To this end, as early as July 2016, before the Council was aware of the Trust, it had already committed to the deal with Mastcraft.
- 8.11 So the agreement to dispose was made without any consideration of the interests of the Trust or the appropriateness of the terms of disposal for the Trust. No alternative solutions were considered for the Trust property, such as transferring it to a separate charity. Mastcraft put together its proposals on the basis of the entire Town Hall site which included repurposing the Prince's Hall into a hotel gym and swimming pool. The deal was already to all intents and purposes done and the Council was wedded to it for its own benefit.
- 8.12 It was not until late 2016 that the Council discovered the existence of the Trust and in 2017 proceeded to apply for a scheme to change the objects and consent from the Charity Commission to the disposal in order to "fix" the problem and enable the deal to go ahead and accordingly carried out its flawed and misleading consultations.
- 8.13 In correspondence we have seen (*see email chain between Ealing's Council's solicitors and Charity Commission in 2018, marked as document D14*), the Council's solicitors Browne Jacobson made the case that a cy-pres occasion arose on the basis that the purposes were uncertain in law and not exclusively charitable. This was also reflected in the flawed consultation. The Charity Commission agrees that this was incorrect – the purposes were always recognised as charitable. No other arguments were raised.
- 8.14 In any case, the disposal itself necessitates a cy-pres occasion, which the Council/Browne Jacobson did not realise and they did not raise arguments to support a cy-pres occasion on this basis. Browne Jacobson simply asked for Charity Commission consent to the disposal. Therefore the Council did not demonstrate that a cy-pres occasion had arisen.
- 8.15 In the events which followed, the Council entered into (further) binding commitments in relation to the disposal to Mastcraft/Surejogi. This includes the Costs Indemnity Agreement dated 6 June 2018 at E23. By that agreement, the Council committed to pay to Mastcraft the sum of £350,000 if the Transaction did not proceed. At this point, the Council was completely committed to the deal. It was now fettered in its ability to separate its own interests from those of the Trust. This commitment was made before the Commission had given any authority to proceed. We are concerned that the Council's failure to properly consider the interests of the Trust are partly driven by its having entered into a costly Cost Indemnity Agreement which means that the Council will be considerably out of pocket if the Transaction does not go ahead.
- 8.16 The Charity Commission notified the Council in June 2019 that the Council could not rely on its earlier decisions in relation to which the Council considered its own interests (*see response to Charity Commission letter of 7<sup>th</sup> June 2019 at D16*). To this end, all of the Council's decisions to enter into the Transaction before being aware of the existence of the Trust were not valid in relation to the Trust. The reality is that the Council was already committed to the Transaction before it became aware of the existence of the Trust and so the whole basis for the scheme – which is entirely driven by the pursuit of that deal – is flawed.

- 8.17 Following the Charity Commission's meeting with the Council on 10<sup>th</sup> July 2019, the Charity Commission wrote to the Council to indicate that the Council needed to set out the case for a cy-pres scheme and, in particular, to identify the cy-pres occasion and full details of the trustee decision, including an evaluation of alternatives.
- 8.18 Consequently, the meeting of the General Purposes Committee of 26<sup>th</sup> September 2019 at H34 considered the basis for the decision and case to apply for a cy-pres scheme and considered alternative options. At that meeting, the case for the cy-pres occasion was identified as being (a) that the Halls were not financially viable as costs of maintaining the Halls exceeded the income and (b) the Halls were not independently viable as charity property therefore alternative options were limited. Unfortunately, the Council's decisions on this basis were flawed due to incorrect identification of the Trust's property and financial position as outlined below and, consequently, the Council's case for a cy-pres occasion is wholly without merit.
- 8.19 **Halls are independently viable**
- 8.20 The Council and its solicitors Browne Jacobson seek to argue that the Halls are not viable as a standalone charity. In particular, in the letter from Browne Jacobson dated 14 March 2019 at D16, the solicitors argue that:
- 8.20.1 *"The Victoria Hall is not a separate building and it is difficult to envisage how it could be operated as such. For example, the entrance to the Victoria Hall is off the first floor landing of the Town Hall main reception area."*
- 8.20.2 *"Although mention has been made of separate external access...that access would be impractical for use other than in an emergency or for event-related deliveries..."*
- 8.21 To this end, Browne Jacobson conclude that:
- "The Trustee has considered other options...but...it is not possible for the Hall to be operated in isolation to the rest of the building"*.
- 8.22 In their response to the Charity Commission of 7<sup>th</sup> June 2019 at D16, Browne Jacobson also submits that *"it would be impossible to operate or maintain the charity asset separately from the rest of the building"* again claiming that the only access is via fire exits.
- 8.23 In the March 2019 correspondence, Browne Jacobson suggests that other options have been considered for the Trust. However, in the 7<sup>th</sup> June 2019 response, Browne Jacobson concede that the Council has never considered a proposal to operate, maintain and/or manage the Halls separately as this *"is impractical"*.
- 8.24 We would refute that alternatives for the Trust have ever been considered – no options paper has ever been sought from relevant experts on the viability of different options for the Trust. No independent advice has been sought from property experts. The only advice and options considered have been those for the benefit of the Council – as noted above, the deal was done with Mastcraft before the existence of the Trust was known.
- 8.25 In any event, the comments made by Browne Jacobson are wrong and overlook some rather fundamental points:
- 8.25.1 The Trust either owns a joint interest in the Town Hall entrance and/or it has easements through it. From the outset, the two Halls (Victoria Hall and Prince's Hall) have stood attached to but separate from the Town Hall apart from the first floor (main) entrance to the Victoria Hall, which

is accessed by a grand staircase through the main building. It was clearly always intended that this would be a shared facility, and in 1902 the Trustees contributed to the cost of a portico to the ground floor street entrance (see extract from minutes of committee of Victoria Hall Trust dated 17 March 1902 at H40. In particular, the minutes record that “*the Committee recommended.... that a cheque for £60 be drawn in favour of the Borough of Ealing in payment of the Trustees proportion of the cost of the portico at the front entrance of the Hall*”. The Council is aware that the Trust has an interest in the entrance (see H41).

- 8.25.2 It is clearly extremely unlikely that the Trust – which at that stage was operating properly by committee – would have contributed to the entrance without having a proprietary interest in it or the benefit of easements.
- 8.25.3 The Victoria Hall initially also had two sets of stairs to street level through the north façade (shown in Charles Jones 1912 drawing). One of these remains today as primarily an emergency exit. The other was removed in the 1920s, but this entrance could easily be reinstated.
- 8.25.4 Alternatively, it is perfectly feasible to provide an independent street level entrance to the north of the building and architectural plans and sketches have been prepared and seen by the Council showing how this could be done. (See *plans prepared by Friends of Victoria Hall at Document H42*)
- 8.25.5 A separate stairway also exists to the east of the building, serving the Lounge/bar, Artists’ rooms and backstage toilets. This is now within an area proposed to be handed over to Mastcraft for demolition, without compensation to the Trust. Despite the Council’s claims that the Halls have no access to toilets, the toilets in the Town Hall belong to the Trust;
- 8.25.6 The Prince’s Hall below has its own street level entrances to the west, and the two buildings share a common service staircase at the southwest corner. The Prince’s Hall has access from beneath the main staircase and from the ground floor level cloakrooms and toilets to the main Town Hall street entrance.
- 8.25.7 These access ways have remained available to the Trust and to users of the Hall for the entire life of the building. The Council has previously acknowledged this. In seeking a legal opinion on the status of the trust in 1935 the then Town Clerk recognised (Instructions to Council dated 1935) that the Trust had established a right of access, as well as the use of the separate entrance to Victoria Hall. (Document H42)
- 8.25.8 We note that the ‘independent’ professional valuation of the Prince’s Hall by Sanderson Weatherall specifically excluded any consideration of the extent of the Trust’s property or the Trust’s rights of access which is patently wrong. Para.7.2 of their report states:
- “We will not examine title documents and, therefore, assume that ... the interest is not subject to any onerous restrictions, to the payment of any unusual outgoings or to any charges, easements or rights of way.”*
- 8.26 To this end, it is abundantly clear that the Halls are independently viable from the Town Halls. We have noted below the correct financial position for the Trust in relation to which the Council’s decisions are also flawed.
- 8.27 Despite its arguments, the Council has singularly failed to consider any genuine alternative propositions for the Halls and has persisted with the false premise that the Halls are not independently viable due to lack of access or toilets which is incorrect.

- 8.28 To this end, the cy-pres occasion for disposing of the Halls cannot be made out.
- 8.29 **Financial position of Trust not ascertained**
- 8.30 The Council also argues that the Halls are not financially viable as costs exceed income. However, the Council and Charity Commission cannot properly consider whether a cy-pres occasion has arisen without proper consideration of the correct financial position of the Trust.
- 8.31 The Council has not maintained accounts (*see first review of accounts in minutes of 15 January 2019 General Purposes Committee meeting, marked as document H33*), the Council occupied Trust property without paying rent and has, most likely, misapplied the income for decades. To this end, it is impossible to properly assess the financial viability of the Trust – and so whether the disposal of the Halls is necessitated – without a forensic review of the Council's historic accounts and the rebuilding of the Trust's accounts and refunding of misapplied funds.
- 8.32 Furthermore, the Council has given a very mixed and contradictory picture in relation to the financial health of the Trust. For example, back in 2017 (*see report to full Council dated 19<sup>th</sup> December 2017 at C9*) the Council acknowledged that the Halls generated income of over £250,000, producing an annual surplus of £57,000 which was reached by allocating 20% of shared expenses. The Council now seeks to argue that the Halls operate at a loss due to arbitrary deduction of a higher proportion of costs – attributing 38.98% of Halls Booking staff costs on the claim that it was appropriate to allocate staff costs on the basis of proportion of rental income rather than space.
- 8.33 It is difficult to see how this arbitrary allocation can be justified given that just two of the areas available for hire belong to the Trust, compared to 9 which belong to the Council (*see Appendix IV of Sanderson Weatherall valuation report attached to General Purposes Committee minutes 26th September 2019 at H34*). There is no evidence that booking staff are allocated to work on specific areas, nor are records kept of the amount of time they spend on each, but it is reasonable to expect that relative to income significantly more time will have been dedicated to the smaller and less remunerative bookings for the Council-owned rooms than to the Trust hirings, of which there are far fewer.
- 8.34 A better indication of relative complexity and therefore workload would be the number of separate invoices/credits generated for each area. The Council's own figures (*as detailed in the Sanderson Weatherall report referenced above*) show that in 2018-19 Trust bookings generated 809 such events (17.34%), while the Council's own areas required 3856 (82.66%). Had these percentages been applied to the allocation of staff costs, the charge to the Trust in the draft accounts would have been £75,108, some £93,730 less than claimed on this item alone.
- 8.35 In summary, if all these points are taken together, it might not be unreasonable to conclude that the Council's own data suggests that in 2018/19 alone, when occupancy was low due to the notice of imminent closure, the Trust actually made an operating surplus of around £139,500, compared to the loss of £80,500 shown in the draft accounts that have never been audited. If this is right, the Council would not be subsidising the Halls at all. It would be the other way around.
- 8.36 Exactly what the true situation is impossible to know. This could only be established were a formal costs allocation agreement in place between the Council and the Trust. That none exists is a further reflection of the Council's inability to separate out the interests of the trust from its other interests.

- 8.37 We understand that for accounting purposes the Council does now record when it uses the Trust's property. However, the Council does this at the discounted community rates not at the full commercial rates which it ought to be paying. If the Council had paid full rates, this would result in additional income for the Trust of around £40,000.
- 8.38 Importantly too, the financial viability of the Trust cannot be properly considered without consideration of its charitable status. The decision to dispose of the Trust property was made at a time when the Council did not realise it was charity property. The Council had not operated the charity property to its maximum benefit for decades. It wound down bookings for the Halls some years ago, advising regular hirers to look for new accommodation before ceasing to accept bookings altogether. Both Halls are now closed to everyone except the Council which used it for instance, for the General Election count.
- 8.39 As the Council has not been operating the Trust as a charity, it has not been applying rate relief, which would result in a significant saving which we estimate to be over £35,000 per year.
- 8.40 Furthermore, obviously, as a charity, the Trust would also have access to other sources of funding, such as fundraising from members of the community for donations and legacies and carrying out fundraising events as well as seeking grants for preservation of the property (such as Heritage Lottery and Arts Council funding) as well as tax reliefs. This has been entirely overlooked by both the Council and the Charity Commission.
- 8.41 Bringing those factors together, as things stand the Trust most certainly could be financially viable once it is operated properly as a charity.
- 8.42 In any event, it is impossible to assess the position of the Trust and so whether a cy-pres occasion has arisen, without considering its true financial position (through restatement of the accounts), its status as a charity and the opportunities that brings (such as through fundraising and heritage grants) if it were to be run properly.
- 8.43 The Council's arguments that a cy-pres occasion has arisen on the basis that the cost of maintaining the Halls exceeds income is therefore flawed.
- 8.44 **Trust property not ascertained**
- 8.45 It is impossible to properly consider whether Current Objects remain suitable without having properly identified the Trust's property and interests as outlined above.
- 8.46 **Council's case for a cy-pres scheme – consideration of other options was flawed**
- 8.47 Having been advised by the Charity Commission that it had not properly taken the decision to apply for the scheme in the interests of the Trust or made out a case for a cy-pres occasion, the Council set about remedying this retrospectively at a meeting of the General Purposes Committee of 25<sup>th</sup> June 2019 (see H34), some five years after it had agreed to dispose of the Halls to Mastcraft. In those papers, the GPC provides as follows:
- 8.47.1 The Trust would have "*full use of the trust property (post swap)*" under the community use provisions. Community use would be available 355 days per year. We have outlined above why that is most certainly not the case. Among other limitations, the Community Use Protocol does not even give beneficiaries any guaranteed use;
- 8.47.2 Mastcraft will have responsibility for repairs and maintenance;

- 8.47.3 When considering the options available to the Trust, the Council may consider the transaction with Mastcraft “set against the range of options”. Other options would include the ACV bids;
- 8.47.4 The Trust is operating at a significant deficit – although the report sets out the basis for the Council’s calculations and we have highlighted why this is wrong;
- 8.47.5 In considering the options available, the Council looks at this in the context of the options they considered for the Town Hall as a whole (before they were aware of the existence of the Trust). Further, the Council considers the following options: opting out of the Mastcraft deal, proceeding with the Mastcraft deal, altering the Mastcraft deal or finding another arrangement;
- 8.47.6 In considering alternative options, the GPC notes that:
- (a) The Halls have no separate access (which we have noted above is incorrect) and the Victoria Hall and Prince’s Hall are reliant on Town Hall toilets – this is also incorrect as noted above. These toilets belong to the Trust.
  - (b) The Trust is “severely limited” and cannot explore other options as it has no staff or funding to commission the work. This is an extraordinary basis for ignoring other options.
  - (c) The Mastcraft deal is time limited. This is not a relevant factor.
  - (d) No suitable ACV bids were received.
- 8.48 This is the limit of the Council’s consideration of other options. As can be seen, the Council’s consideration of other options for the Trust is wholly inadequate and the basis for their decisions above is therefore flawed. No report has been commissioned on alternative futures for the Trust, no independent property advice received.
- 8.49 Furthermore, in considering whether the Trust has received sufficient independent advice, the Council notes that it has obtained independent legal advice but nothing further - consideration of the interests of the Trust has largely been a matter for members of Council through the GPC i.e. not independent at all.
- 8.50 Taken together, the Council’s decision to apply for the scheme and to make a case for a cy-pres occasion was flawed and did not comply with the Charity Commission’s guidance. We do not think that this decision can be taken by the Charity Commission as a proper basis for making the scheme. The case that the Current Objects have ceased to be suitable and effective cannot be made out without a proper consideration of the correct extent of the Trust’s property and financial position and fundraising prospects as well as other options for the Trust.
- 8.51 The reality is that the Council is now so firmly wedded to the deal with Mastcraft – and indeed has been financially committed since it entered into the Costs Indemnity Agreement in June 2018 (at E23) – and has now entered into the lease – that it is not willing to properly consider other options.
- 8.52 **Failure to consider the appropriate considerations**
- 8.53 Our view is that the Council has not considered (and therefore the Charity Commission cannot be persuaded that) the appropriate considerations (being the spirit of the gift and current social and economic circumstances) because:

- 8.53.1 It failed to act in the interests of the Trust as the Council decided to enter into the Transaction before any consideration was given to the Trust (see *para 2.2 of Bates Wells 29 Jan 2019 letter, marked as document A3; see Ealing Council cabinet minutes discussing the Town Hall proposals on 21 October 2014, marked as document C6*); and
- 8.53.2 the consultations were fundamentally flawed (see *the consultations marked as document C8; see paragraph 4.5 of Bates Wells 29 Jan 2019 letter identifying the flaws in the consultations, marked as document A3; see consultation responses as collated by Ealing Voice and marked as document F27; see correspondence between Charity Commission and Browne Jacobson marked as document D15 and D16*) and the Council did not properly take the responses into account.
- 8.53.3 The Council has not properly identified the extent of the Trust's property or its financial position or considered other options.
- 8.54 In any event, we would argue that (a) the spirit of the gift is clear (preservation of Halls for the benefit of community and (b) current social and economic circumstances do not justify overriding that. If anything, current social and economic circumstances support that maintaining this community space is vital for exercise (given obesity levels) and community groups (given polarisation of society and political views).
- 8.55 The Council's motivation for disposal has always been to dispose of the Council's own property (see *Scrutiny Committee meeting minutes of 4 August 2016, marked as document C7*), but the Council's own economic situation is not relevant. Social circumstances have not changed – local inhabitants still need the Halls for local activities. The main reason put forward by the Council for their disposal is that they are not economically viable. However, we have outlined in these representations why that is not the case. Due to financial mismanagement etc. the Council cannot show that the Halls are not economically viable and the Council has not considered other options to save the Halls.
- 8.56 The scheme does not preserve the Halls or any of them for the new objects, as outlined above.
- 8.57 **New purposes are not close to Current Objects**
- 8.58 The new purposes should be as close as possible to the Current Objects. However, this is not the case. The new purposes have the effect of authorising the disposal of all the charity property and do not secure their use for the objects or secure replacement facilities with the proceeds.

9. **MISLEADING CONSULTATION AND MISREPRESENTATION TO THE CHARITY COMMISSION UNDERMINES THE CHARITY COMMISSION'S DECISION TO MAKE THE SCHEME**

- 9.1 The Charity Commission's Operational Guidance <https://ogs.charitycommission.gov.uk/g500a001.aspx> notes that:

*"Before we make a decision as to whether a Scheme should be made, we will usually expect the trustees to have carried out a **genuine and appropriate consultation exercise to take into account the views of the charity's stakeholders about the proposals and properly inform their own decision** as to whether a Scheme is required.*

*Our policy is that consultation should be carried out in all but exceptional cases. Although it is not a legal requirement, it is part of our usual Scheme making process and helps to ensure that the trustees have properly established the case for making the changes in the interests of the*

*charity and for showing that the criteria have been met before we commit staff time and resources to proceeding.” [our emphasis added]*

9.2 The Charity Commission’s Operational Guidance further notes that:

*“If the trustees carry out a consultation exercise, this should be designed to seek the views of those who would be affected by, or those who might have a particular interest in, the changes proposed”*

9.3 Furthermore, the Charity Commission’s Operational Guidance provides that:

**“Where the proposed changes are more significant, for example the change of use of a charity’s property, we would expect the consultation to be more vigorous including some (or all) of the following:**

- *publication of proposals on appropriate websites and in local media (which should clearly explain what is involved)*
- **open days and exhibitions**
- **public meetings (open and accessible to the general public)**
- *meetings with staff and volunteers and any beneficiaries who would be directly affected by the proposals – such as the residents of almshouses, church members or users of the village hall*
- **meetings (or focus groups) with user and other interest groups**
- *meetings (or focus groups) with people who have particular needs, such as people with disabilities and people from minority ethnic groups*
- **questionnaire based surveys (postal or face to face)**
- **local parish referenda**
- *formal written consultation exercises” [our emphasis added]*

9.4 Unfortunately, the Council’s consultation was far from “genuine” or “appropriate” and appears designed to obscure the Council’s real proposals. Despite the far-reaching (to use the Charity Commission’s term, “significant”) changes proposed by the Council, the Council merely put a single page notice on its website in relation to the two consultations (which were in any case misleading). This was not a proper and meaningful consultation in accordance with the Charity Commission’s own published requirements.

9.5 The consultations were also incredibly misleading. Our concerns are set out in detail in *Bates Wells letters of 20 June 2018 and 29 January 2019, marked as document A2 and A3* but include the following (among other issues more particularly identified in that letter):

9.5.1 Because the consultation was separated into two parts (the first on the proposed change of objects and the second on the proposed disposal) the Council’s proposals were misleading and not easily understood (see *more particularly paragraph 4.5 of Bates Wells 29 January 2019 letter, marked as document A3*);

9.5.2 The Council suggested to respondents that it was seeking a scheme to change the objects solely because it was unclear whether the existing objects were charitable and stated that the Charity Commission had already agreed to make a scheme (which it had not). This consultation

was therefore blatantly incorrect and grossly misleading. We note that the Charity Commission has now confirmed that a scheme cannot be made on the basis that it was unclear whether the current objects were charitable. This completely undermines the Council's consultation which was made on a wrong and misleading basis;

- 9.5.3 Further, the Council did not explain that the impact of the proposed new objects was to permit the disposal of the Halls by allowing the activities to be provided in any hall; and
- 9.5.4 The second consultation did not make clear that the disposal could only be made by scheme to change the objects and the Council sought to argue that the disposal was justified as the income generated on letting the Victoria Hall was inadequate, ignoring that (a) the Council's own failure to keep accounts means this is impossible to determine and (b) if the Halls were properly operated as charity property, other avenues for raising funds would be available (e.g. Heritage Lottery Funding).
- 9.6 Furthermore, as consultation was carried out on the basis of the previous proposed objects which are substantially different to the current proposals set out in the draft scheme, the consultations are now rendered ineffective.
- 9.7 Having carried out flawed and ineffective consultations, the Council then proceeded to make extraordinarily misleading representations to the Charity Commission through its solicitors Browne Jacobson as to the nature of the representations made by the public in response to the consultation.
- 9.8 As the Charity Commission is aware, the Council received a huge number of responses – over 275 - made by local inhabitants and community groups opposing the proposal. However, Browne Jacobson suggested that most respondents supported the proposals (*see email correspondence between Browne Jacobson and Charity Commission, marked as document D14*) as follows:
- “The Trustee considered that the overall level of public response indicated that the public wished the charity to continue to operate and would not wish the charity to fail due to uncertain or unclear purposes”* which is blatantly misleading.
- 9.9 As has been noted, this was grossly misleading and was the result of the misleading wording of the public consultation itself which wrongly indicated that the current objects were not charitable.
- 9.9.1 The consultation also made no mention of the disposal of the Prince's Hall or the proposed Hall swap, despite the disposal of the Prince's Hall to Mastcraft always being within the Council's plans. For example, the plans submitted by Mastcraft expressly provide for demolition of the Trust's property (*see para 4.3.4 of Bates Wells 29 Jan 2019 letter, marked as document A3; see also the heritage report particularly pages 56, 71 and 72*) filed with the planning permission and marked as document E25 and see the plans attached to the planning permission identifying Charity's property to be demolished, marked as document E20; see also the plans attached to the planning permission setting out the proposed plan at floor level for Victoria Hall and Prince's Hall, marked as documents 21 and E22). This was not addressed within the Council's consultation.
- 9.9.2 Browne Jacobson misled the Charity Commission that the Queen's Hall is a “more impressive” property (*see correspondence between Browne Jacobson and Charity Commission, marked as document D16*) and so better for the Charity, despite the Council letting it at lower rates than the Prince's Hall, lack of separate entrance (*see surveyor's valuation report, included (from page*

42) in the report to the General Purposes Committee meeting dated 26 September 2019, marked as document H34) etc. (see also Bates Wells 29 January 2019 letter, marked as document A3)).

9.10 In any event, the proposed draft scheme is significantly different to the draft scheme put out to consultation – see above (see previous draft Scheme as attached to 2017 correspondence between Charity Commission and Browne Jacobson, marked as document D13). The public have not been consulted on these new plans (see absence from consultation documents, marked as document C8).

## 10. THE SCHEME PROCESS AND PUBLIC NOTICE HAVE BEEN UNFAIR

10.1 Overall, the Council's public consultation on its proposals for a draft scheme, the Charity Commission's and Council's public notice on the current draft scheme and the other procedural aspects have been flawed and undermine the validity and effectiveness of the proposed scheme.

10.2 As a matter of procedural fairness, our view is that the Council ought to now start again and carry out a full and open public consultation on its proposals.

10.3 We set out below details of the existing failings.

### 10.4 Misleading consultation by Council

10.5 We have noted in Section 9 above that the Council carried out two misleading consultations on its proposals for the scheme– see above.

### 10.6 Charity Commission's flawed public notice under s88 Charities Act 2011

10.7 As the Charity Commission is aware, public notice of a draft scheme must be given unless the Charity Commission decides for any reason that this is not necessary. It is the Charity Commission's practice to require public notice where, as here, the proposed scheme relates to a matter where the Charity Commission is aware that there is a significant level of public interest in the matter or gives power to dispose of designated property or will change the use of community assets, among other things.

10.8 The Charity Commission clearly accepted that public notice was required here. The purpose of the public notice is to give beneficiaries and others the chance to comment on and make representations on the draft scheme.

10.9 However, the effectiveness of such public notice, and the Charity Commission's compliance with s88 and its own Operational Guidance, relies on effective public notice, which has not been the case here.

10.10 The Charity Commission's practice, as set out in its Operational Guidance, is to post a copy of the draft scheme on its website. (See [https://ogs.charitycommission.gov.uk/g500a001.aspx at B10.6](https://ogs.charitycommission.gov.uk/g500a001.aspx_at B10.6)). In accordance with that Operational Guidance, notice is usually for one calendar month from the day the notice is first displayed, but the Operational Guidance also notes as follows:

10.11 *"We may, in exceptional circumstances, decide to reduce or extend the notice period.*

10.12 *We might decide to extend the notice period where the date covers a holiday period or religious festival or where the notices go up in a park or open space in the winter where there are*

*potentially fewer visitors. If we do decide that a longer notice period is necessary, we might extend this to six weeks.”*

- 10.13 In this case, public notice of draft scheme was originally published on 26<sup>th</sup> November with the one month period to run until 27<sup>th</sup> December 2019.
- 10.14 This period was extraordinarily unfair and unreasonable given that it covers the Christmas holiday period including two bank holidays and a period when many of those interested will be away or distracted by Christmas activities and so unable to consider the complex scheme or make representations. The December 12<sup>th</sup> General Election, which came half way through the consultation period was an unusual but very significant local distraction. This notice period did not for these reasons reflect the Charity Commission's own internal operational guidance. Given that the Charity Commission was already aware of the level of public concern about the disposal of Victoria Hall, this was particularly concerning.
- 10.15 We made contact with the Charity Commission to express our concern about the notice period. The period was then extended to 6<sup>th</sup> January. This extension was of little real value as by the time it was announced those involved in the preparation of this submission had already made their plans for the Christmas holiday period which for many people, including for example key LBE officers, ran up to that date.
- 10.16 Unfortunately, in changing the date, the Charity Commission inadvertently removed the draft scheme from its website.
- 10.17 We then had to telephone the Charity Commission to ask them why it had been removed and the draft was then put back up and the date extended to 7<sup>th</sup> January, although this change was not widely advertised
- 10.18 One also cannot help cynically viewing the timing of the public notice to coincide with the Christmas period, bearing in mind the Charity Commission chose to take a similar approach in the case of Bath Recreation ground (see Sparrow and Others <http://charity.decisions.tribunals.gov.uk/documents/decisions/decision27mar14-recreation-ground.pdf> ) where there was similar local interest.
- 10.19 Leaving this aside, it is virtually impossible for a lay person to find the draft scheme on the Charity Commission's website. There is no signposting from the main screen and it is necessary to already be aware that the draft scheme has been posted in order to look for, and find it.
- 10.20 All in all, the Charity Commission's failure to fairly meet the requirements of s88 Charities Act 2011 and its own Operational Guidance has been disappointing. The notice period still covers all of the Christmas period when many will be away and unable to make representations. The draft scheme was missing from the Charity Commission's website for a period of time. The draft scheme is difficult to find on the Charity Commission's website.
- 10.21 Given that the Charity Commission was already aware of the substantial local interest in the Council's proposals, we would have expected the Charity Commission to ensure that the draft scheme was brought to the attention of interested parties and to have specified an effective notice period. We feel that this undermines the validity of the public notice, which should be recommenced in the New Year.
- 10.22 **Impossibility of understanding and making representations on the scheme without underlying documents**

- 10.23 The draft scheme is a technical legal document. This draft scheme is particularly complex and lengthier and more detailed than most, running to 6 pages plus accompanying diagrams.
- 10.24 As noted above, the Charity Commission remains aware of the high level of local interest and unhappiness in relation to the proposals. That being so, it is surprising that the Charity Commission has chosen to publish the draft scheme inviting representations without providing any explanation of the terms of the scheme or any of the supporting documents.
- 10.25 In particular, the scheme cross refers to the lease (which has been entered into by the Council) and to the Community Use Protocol (which has again been entered into by the Council – see the s106 Agreement at E26). The Community Use Protocol has been added to the Council's webpage but without explanation. The lease is not provided with the draft scheme (redacted or otherwise). The Council papers also suggest that sub-leases will be put in place of the Victoria Hall and Queen's Hall, yet these are not even referred to in the draft scheme let alone provided.
- 10.26 Clearly, the terms of the underlying arrangements are vital to understand the draft scheme including the provisions of any sub-lease of the Queen's Hall and/or Victoria Hall to the Council/Trust including any termination provisions, the terms of the Community Use Protocol by which community use will supposedly be secured and so on. Without these documents, the scheme by itself cannot be understood.
- 10.27 It is impossible to assess the contents of the draft scheme and the effect of its provisions without supporting documents such as the lease and the s106 Agreement which sets out the Community Use Protocol. We have obtained some supporting documents, but other potential respondents will not have the benefit of these.
- 10.28 We made an FOI request to the Council to seek to obtain further information in order to assess the scheme provisions. However, despite making the request on 10<sup>th</sup> October and 20<sup>th</sup> November 2019, the Council has sought an extension of the time limit to respond taking them to 20<sup>th</sup> January, after the deadline to make representations on the draft scheme.
- 10.29 A partial response to our request was eventually sent to us late in the morning of December 24<sup>th</sup> with some of the key information requested in October withheld.
- 10.30 It is not clear whether this was a deliberate attempt to avoid giving this material to us prior to the public notice period expiring. However our last minute receipt of it has made it impossible to assess properly and comment on it before the deadline for responses to the draft scheme.
- 10.31 The Council has also provided the copy lease to Friends of Victoria Hall on 23<sup>rd</sup> December 2019 but several key appendices were not attached to the series of 11 email communications to us because of their individual size. We did not have time to review and consider the implications of such an immense and yet partial document over the Christmas period.
- 10.32 Please note that once we have reviewed the lease and the information provided in the s.106 response we may provide additional comments and representations outside of the Charity Commission's consultation period. We trust that the Charity Commission will accept any such comments outside the public notice period given that the delay in providing a copy to us was of the Council's doing.
- 10.32.1 **Publication of the public notice by the Council**
- 10.33 As required by the Charity Commission, the Council (as Trustee) also published the draft scheme on its website. The Council continues to mislead the public. The Council has, in

accordance with the Charity Commission's requirements, placed a copy of the draft scheme on its website [https://www.ealing.gov.uk/info/201042/current\\_consultations/2618/ealing\\_town\\_hall\\_-\\_victoria\\_hall\\_consultation/1](https://www.ealing.gov.uk/info/201042/current_consultations/2618/ealing_town_hall_-_victoria_hall_consultation/1).

10.34 However, unfortunately, yet again, the Council seeks to mislead the public.

10.35 In its accompanying narrative, the Council provides that:

- (a) *"the future management and use of Victoria Hall will be consistent with the aims of the Trust"*. This is incorrect and misleading. The Victoria Hall will be owned by Surejogi and will be operated for commercial purposes with only limited community use secured under the narrow Community Use Protocol as outlined above.
- (b) The Council states that *"A draft scheme has been published setting out the Charity Commission's reasons for agreeing to the disposal"*. There are no reasons published by the Charity Commission.
- (c) The Council states that *"Contracts have been exchanged with Mastcraft"*, in other words, the deal has already been done. In fact we understand that the contract is conditional on the scheme being made which is not stated.
- (d) The Council states that *"The council will retain freehold ownership of the town hall and will continue to act as a trustee for the Victoria Hall Trust, to ensure the Victoria Hall and Queen's Hall.....will be preserved for community use and charitable purposes"*. In fact it is abundantly clear that the property is not preserved for community use or charitable purposes. It is being disposed of to a commercial hotel provider with only very limited protections for community use.

10.35.2 All in all, the wording of the Council's notice is grossly misleading as it appears to suggest that (a) the deal has already been done and (b) the Trust property has been preserved and protected for the charity, which is of course not the case at all. This is a blatant attempt by the Council to hoodwink the public and deter them from fully considering the proposals.

10.35.3 **The draft scheme bears little relation to the draft scheme put out to consultation**

10.35.4 The new draft scheme and the case for it which is the subject of the current public notice is significantly different to the draft put out to consultation by the Council back in 2017/2018 which formed the basis for the Council's application for the current scheme. This undermines the effectiveness of the Council and Charity Commission's decision to apply for and make a scheme.

10.35.5 **Failure to comply with s121 Charities Act 2011**

10.35.6 As noted on the Council's own webpage (see above) the Council has now entered into a binding commitment to dispose of the Halls to Surejogi as the lease was entered into on 5 November 2019 (subject to the scheme being made).

10.35.7 Unfortunately, it appears that the Council has failed to comply with s121 Charities Act 2011 and, in particular, failed to give public notice inviting representations at least a month before entering into the agreement for the lease.

11. **Failures by Council as trustee undermine its decision to apply for a scheme**

- 11.1 It is clear from the decision-making of the Council to date that its decision to dispose of the Halls has not been made with the interests of the Trust in mind.
- 11.2 The Council was not acting in the interests of Trust when it entered into the commitment to dispose of the Town Hall to Mastcraft. It was motivated solely by the desire to dispose of its Town Hall. That Victoria Hall was charity property did not come to light until after disposal process started.
- 11.3 Furthermore, the Council's ongoing and serious failings undermine both its suitability to act as trustee and its decision to apply for a scheme and the misapplied funds ought to be refunded before the Charity Commission even considers assisting it by using its powers. For example:
- 11.3.1 The Council has failed to register the Victoria Hall on the Register of Charities for decades (*see historic correspondence with Charity Commission, marked as document B5 dating back to 1956*) – which is particularly shocking given it is clear that Charity Commission asked them to do so decades ago and more recently. Registration should be made before consideration of any scheme.
- 11.4 The Council has failed to keep accounts for the Trust. While it has now prepared draft and unaudited accounts for 2018/19, long standing questions about their accuracy remain unanswered. It is necessary for the Council to carry out a review of its historic accounts in order to reconstitute the Trust's funds.
- 11.5 In this regard, the Council has failed to account for expenditure of the Trust's funds. We believe that the Council acknowledges that in previous years the Trust income produced a surplus, yet there is no explanation as to how it has been applied. It is likely (given that the Council was apparently not aware of the Trust) that this was put into the Council's own funds in breach of trust and so ought to be identified and refunded.
- 11.6 In the early years of the existence of the Trust, the Council paid rent for its occupation of the Trust property. This obviously ceased over time (perhaps as long ago as 1975). The Council therefore failed to pay for its occupation in breach of trust for decades and these amounts ought to be refunded.
- 11.7 The Council has failed to operate the Trust as a charity. The Council has not sought to maximise the Trust's property. The Council has not sought to maximise the Trust's funds through charitable fundraising or applied charitable reliefs such as rate relief.
- 11.8 The Council failed in its core charity law duties to register the charity, administer the Trust for its purposes, not to profit from the charity and to keep separate accounts. The Council is not a suitable trustee and therefore the Charity Commission should not be supporting it through making the scheme.
12. **Failure by the Charity Commission to comply with its statutory objectives**
- 12.1 As the Charity Commission is well aware, its statutory objectives include promoting the effective use of charitable resources and promoting compliance by charity trustees with their legal obligations to exercise control and manage administration of the charity.
- 12.2 We have concerns that the Charity Commission is failing in its statutory objective to promote effective use of charitable resources by:

- 12.2.1 Proposing the draft scheme permitting disposal of charitable property without the case being properly made out and without it being in the Trust's interests (e.g. other options not fully explored); and
- 12.2.2 Including provisions in the draft scheme which are not in the interests of the Trust and which do not properly secure the interests of the Trust (and, in particular, do not secure use of the charity's property for its objects and allow the charity's property to be exploited by a commercial hotel operator) and omitting other provisions.
- 12.3 We are concerned that the Charity Commission is failing in its statutory objective to promote compliance by charity trustees with their legal obligations by:
- 12.3.1 Allowing the historic and ongoing mismanagement by the Council as trustee to go unaddressed (see *paragraph 2.1 of Bates Wells 29 January 2019 letter, marked as document A3*);
- 12.3.2 Allowing the historic unauthorised trustee benefit received by the Council in relation to free use of the Trust's property without paying rent to go unchecked and not requiring the Trust to reimburse the income of the Trust which it is likely were paid into its own coffers due to lack of awareness of the existence of the Trust (see *paragraph 5.2.4 of Bates Wells 20 June 18 letter, marked as document A2; see also paragraph 1.9 of Bates Wells 29 January 19 letter, marked as document A4*);
- 12.3.3 Allowing the Council to continue to fail to register the Trust on the Register of Charities (see *historic correspondence with the Charity Commission, marked as document B5; see paragraph 2.3, Bates Wells 29 Jan 2019 letter, marked as document A3; see absence of any registered charity number in draft Scheme, marked at document A4*). In this regard, we note that the Charity Commission indicated to the Council in earlier correspondence that it would not be willing to make a scheme until the Trust was registered; and
- 12.3.4 Agreeing to make a scheme despite the Council's serious mismanagement and without including provisions requiring independent trustees/committee members.
- 12.4 Despite clearly stating in correspondence that it would require registration before making a scheme, the Commission's letter of 18<sup>th</sup> July 2019 at *D16* now provides that the Charity Commission would be prepared to make the scheme in advance of registration. Given that the Council have been aware of the existence of the Trust as a charity for a significant period of time (and in fact ignored the Charity Commission's requests to register it decades ago) that the Charity Commission, as charity regulator, is prepared to exercise its powers by making a scheme in advance of registration is quite extraordinary and clearly conflicts with its statutory objectives.
13. **Conclusion**
- 13.1 This is the first opportunity for the beneficiaries of the Victoria Trust to comment formally to the Charity Commission on plans by Ealing Council to dispose of Trust property whose use they have enjoyed for over 125 years. Over the past two years the beneficiaries have sought repeatedly to raise with the Commission very fundamental concerns about the disposal, but the Commission has preferred instead to discuss the proposal only with Ealing Council, the trustee.
- 13.2 Disposal of the Trust property under the scheme would be in line with an agreement struck between the Council, Mastcraft, Surejogi and the Victoria Hall Trust with no opportunity at all for the beneficiaries to have any say. The details of this agreement were only partially revealed to

- FoVH on December 24<sup>th</sup>, shortly before we dispersed for the Christmas holidays. No time has been available to us to assess or respond to the lease agreement.
- 13.3 Under these circumstances, FoVH contends that we and all other potential respondents to the consultation have been given insufficient opportunity to comment fully on the scheme. We have been handicapped by the Council's failure to provide the information required to comment on a deal of the complexity as the one the Council has entered into. We wish therefore to reserve our right to comment more fully on this material after the consultation deadline ends.
- 13.4 Even so, the information FoVH presents in this submission is more than sufficient to demonstrate that the case LBE has made to the Commission to justify its proposals is based on arguments that are unfounded, misleading or often simply wrong.
- 13.5 Our evidence shows that the case for the scheme has not been made. By committing itself to disposing of Trust property before it was aware of the Trust's existence (8.10) and then fettering itself under an indemnity agreement with Mastcraft (8.15) the Council has bound itself to the Mastcraft deal proceeding. Unfortunately, it has not dealt with the conflict of interest this has presented to its role as the Trustee.
- 13.6 The whole scheme, in which there has been no beneficiary involvement (6.1 ff), is driven by the pursuit of the deal. No cy-pre occasion exists (para 8.5). The case for it is based on claims that the Trust is a financial burden on the Council (8.29) and that no other viable options exist for it to continue under its current objects (8.19). Our evidence shows both these claims to be incorrect.
- 13.7 The scheme would lead to all of the Trust's property, including specie land that the Council has failed to identify (7.50) or correctly value (7.62), being disposed of (7.15). It is dependent on a grossly unfair exchange of the Trust's Prince's Hall for the inferior Queen's Hall (7.29) and will result in the Victoria Hall to all intents and purposes being lost to charity (7.13.9).
- 13.8 Overall, the terms of the draft scheme are inappropriate and inadequate to protect the interests of the Trust or its beneficiaries. The terms of the lease as we understand them (7.19 ff), and the Community Use Protocol (7.35 ff) provide no satisfactory safeguards that the interests of the Trust will be protected if the scheme is made.
- 13.9 For these reasons alone the scheme is flawed and should not be made.
- 13.10 We would be happy to meet with the Charity Commission to explore these arguments further.
- 13.11 Please note that, if a final scheme is made, we intend to challenge the Charity Commission's decision in the Tribunal.
- 13.12 We expect the Charity Commission to make clear to the Council that the Transaction should not be progressed until the outcome of those proceedings is known.

**Roger Green, Chair Friends of the Victoria Hall**

**Date: January 3<sup>rd</sup> 2020**

**Friends of the Victoria Hall**  
**Index to bundle**

pdf Page No.	Tab/ Doc	Document	Date
<b>A. KEY DOCUMENTS</b>			
4	1.	Declaration of Trust	6 November 1893
9	2.	Bates Wells Letter to Charity Commission	20 June 2018
15	3.	Bates Wells letter to Charity Commission	29 January 2019
26	4.	Draft Scheme	-
<b>B. HISTORICAL DOCUMENTS</b>			
35	5.	Historic correspondence with Charity Commission	8 October 1956 - 3 August 1966
<b>C. EALING COUNCIL DOCUMENTS</b>			
36	6.	Cabinet Minutes	21 October 2014
53	7.	Overview and Scrutiny Committee Minutes	4 August 2016
63	8.	Council's two consultation documents	2017 - 2018
66	9.	Report to December 2017 Council meeting	19 December 2017
71	10.	Report to General Purposes Committee	15 March 2018
85	11.	Victoria Hall Trust - extent of trust property	n/a
86	12.	Agenda and Document Pack - General Purposes Committee	15 January 2019
<b>D. EALING COUNCIL CORRESPONDENCE WITH CHARITY COMMISSION</b>			
150	13.	Correspondence with Charity Commission – Council's initial request for scheme and Charity Commission's response with draft scheme	26 May 2017 – 19 July 2017
162	14.	Correspondence with Charity Commission (email chain)	3 August 2018 – 2 November 2018
171	15.	Letter from Charity Commission to Council	22 February 2019
175	16.	Browne Jacobson (Council's lawyers) and Charity Commission correspondence	14 March 2019 – 15 July 2019

pdf Page No.	Tab/ Doc	Document	Date
<b>E. DOCUMENTS RELATING TO LEASE</b>			
219	17.	Preliminary Plan 1	September 2003
220	18.	Preliminary Plan 2	September 2003
221	19.	Charity property plan (from Ealing Voice)	n/a
223	20.	Demolition plan VH level – from Council Planning Permission Application	n/a
224	21.	Proposed plan - VH level – from Council Planning Permission Application	March 2018
225	22.	Proposed plan – Prince's Hall level – from Council Planning Permission Application	March 2018
226	23.	Costs Indemnity Agreement between Ealing Council and Mastcraft (redacted)	6 June 2018
233	24.	Plan 3	October 2018
234	25.	Heritage impact assessment prepared for Mastcraft Ltd by Cotswold Archaeology	January 2019
326	26.	S106 Agreement made between Ealing Council and Surejogi containing Community Use Protocol	11 November 2019
<b>F. DOCUMENTS PREPARED BY EALING VOICE</b>			
391	27.	Ealing Voice Responses	2 March 2018
400	28.	Trust floor area	n/a
<b>G. ACCOUNTS AND FINANCIAL INFORMATION</b>			
402	29.	FOI Response (audited accounts)	2012-2018
405	30.	Income and Expenditure summary	2012-2018
406	31.	Report to General Purposes Committee with Victoria Hall Trust Accounts	2018-2019
413	32.	Victoria Hall Trust Accounts – appendix 1	2018-2019
<b>H. DOCUMENTS RECEIVED ON 9 DEC 2019</b>			
414	33.	General Purposes Committee minutes	16 April 2019
419	34.	General Purposes Committee minutes with Report and valuation documents from Sanderson Weatherall (at page 459)	26 September 2019
569	35.	Friends of Victoria Hall statement of evidence to Charity Commission	17 October 2019
579	36.	Appendix 1 – Submission to GPC	26 September 2019

pdf Page No.	Tab/ Doc	Document	Date
587	37.	Appendix 2 – technical drawing – prepared by FoVH	n/a
591	38.	Appendix 3 – technical drawing – prepared by Ealing Council and disputed	n/a
592	39.	History of local engagement and objection to Council's plans	-
597	40.	Extract from minutes of committee of Victoria Hall Trust	17 March 1902
600	41.	Council's case for opinion of Counsel	1935
603	42.	Architect's designs for operation of Trust property separately from rest of Town Hall	-