

**Charity: Victoria Hall, Ealing**

Unregistered charity number: 4057721

**Review of the decision to make a Scheme for the regulation of the Charity**

**1. Introduction**

- 1.1 This is a review of the proposal to make a Scheme for the unregistered charity known as Victoria Hall, Ealing (“the Charity”).
- 1.2 In May 2017, the Council of the London Borough of Ealing (“the Council”), the trustee of the Charity (“the Trustee”), applied to the Commission for a Scheme. After lengthy correspondence and a site visit, the Commission agreed to make the Scheme and, in November 2019, finalised a draft Scheme. In accordance with section 88 of the Charities Act 2011 (“the 2011 Act”), the Commission and the trustee (as agent of the Commission) gave notice of the Commission’s proposal to establish a Scheme. The notice invited representations to be made to the Commission within a period specified in the notice. The Commission received representations, including a petition. Under section 88(5), the Commission must, where it gives public notice, take into account any representations made to it within the period specified in the notice.
- 1.3 I was appointed to review the representations in accordance with section 88(5) of the 2011 Act and the Commission’s Decision Review procedures which are set out in the publication “Dissatisfied with one of the Charity Commission’s decisions: how can we help you?” available on the Commission’s website. I am Neil Robertson, Head of Technical Casework & Quality Assurance. I have not previously been involved in the conduct of the case. This decision represents a final decision of the Commission.
- 1.4 The issue for the decision review is whether the Commission should proceed to make the Scheme, with or without modification, or if it should withdraw the Scheme. In doing so, I can only consider matters that are relevant to the Charity according to the legal framework for making the Scheme.
- 1.5 In conducting this review, I have been mindful of the public sector equality duty set out in section 149 of the Equality Act 2010. I have therefore had regard to the needs set out there: to eliminate discrimination, harassment, victimisation and any other prohibited conduct, to advance equality of opportunity and to foster good relations.
- 1.6 In making the decision, I have considered:
  - the representations made in response to the draft Scheme, including a petition signed by 1,400 people and a detailed 41-page document prepared by the Friends of the Victoria Hall, Ealing (“the Friends”) which I found very helpful;
  - the draft Scheme (finalised November 2019);

- other relevant documents from the Commission’s case files, including all of the information supplied to the Commission by the trustee and others during the course of the case, particularly the report to the General Purposes Committee dated 10 September 2019;
- the charity’s governing document – the deed of 1893;
- the power to make a cy-près Scheme in the 2011 Act, particularly sections 62 and 67;
- the Commission’s Operational Guidance (particularly OG 2 – Application of property Cy-près); and
- the Commission’s statutory objectives, functions and duties (as outlined in sections 14-16 of the 2011 Act) and its public law duties.

## **2. Background to the Scheme**

### **2.1 The Charity**

- 2.1.1 By a deed of 6 December 1893, members of the Ealing Local Board declared trusts over the property, including the property known as the Victoria Hall. The trust property was to be used “for the purpose of meetings, entertainments, balls, bazaars and other gatherings whether social or political”. Income, after deduction of the expenses, was to be applied to “any charities or philanthropic charitable institutions in the district of the Ealing Local Board”.
- 2.1.2 The deed provided for imperfect trusts that were not exclusively charitable. During the current case, the Commission initially considered that the property was not held on exclusively charitable trusts, but then took the view that the trusts had been validated by the Charitable Trusts (Validation) Act 1954. It noted that, on 28 June 1957, the Commission had made an Order to authorise a sale of the organ, which it would only have done if it was charitable property, and, in a letter of 10 July 1957, the Commission had said that the words " or philanthropic" should be treated as if they were deleted.
- 2.1.3. The primary purpose of the Charity appears to be the provision of a facility in Ealing for community use. The Commission has been made aware of the varied activities that have taken place in the Halls over the years until bookings were recently halted.
- 2.1.4 Clause 5 of the Charities Act 2011 provides that it is charitable to provide facilities for recreation or leisure time occupation if the facilities are provided in the interests of social welfare. It further provides that the facilities must be provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended. In this case, the facilities are intended for the public at large.
- 2.1.5 The secondary purpose of the trust, should there be surplus funds, is to financially assist charities in Ealing. The Commission understands that, initially, the operation of the Halls made a profit, which was distributed to local charities, such as for the benefit of local almshouses. So far as the Commission is aware, there has not been any distribution of funds under this purpose for many years.
- 2.1.6 Although originally the Halls were administered by a separate committee, over time it became managed as part of the Council’s property along with the other rooms in the Town Hall. Records show that, in 1936, it was suggested that the property be leased to the Council in its corporate capacity with the Council then paying for the upkeep and

maintenance out of the general rate fund. Although no documentation was entered into, the Council in its corporate capacity took over the running of the Halls from that time. During the elapse of time, the Council no longer recognised that the property was held on charitable trusts, including when it considered and negotiated the disposal of the Town Hall building between 2014 - 2016. Therefore, the trust has not been operated as a charity for many years until recently and separate accounts have not been prepared. This also means that, any conflicts of interest that may have arisen between the Council as trustee and the Council in its statutory capacity will not have been managed.

- 2.1.7 The Charity has not been entered on the register of charities, although there is evidence that the Commission chased registration in 1966. The Council is under a legal obligation to apply for registration by virtue of s.35(1)(a) of the Charities Act 2011. Initially the Commission said that the Charity should be registered before the Scheme was made, but has now accepted the Trustee's undertaking to register the Charity when the Scheme is made.

## 2.2 The Property

- 2.2.1 The property was constructed on land originally owned by the Local Board, which it settled on charitable trust under a power in section 175 of the Public Health Act 1875. Completed in 1888, the property was built to commemorate Queen Victoria's Golden Jubilee using monies raised by public subscription from the inhabitants of Ealing. It principally comprises of the Victoria Hall at first-floor level and, at ground and basement level, Princes Hall. An extension to the original building was added in 1899.
- 2.2.2 The two halls, which are large function rooms, are attached to, but separate from, the Grade II listed municipal Town Hall. The main entrances to the Halls are by way of the main Town Hall street entrance, with the Victoria Hall accessed from a staircase at first floor level. The Prince's Hall has its own street level entrance and the two buildings share a common service staircase. The Council considers that access to the Charity's property through the street level entrance would be impractical for use, other than in an emergency or for event-related deliveries, as it is direct from the highway pavement, although this has been disputed by some making representations. However, as I understand it, access to the Halls is usually gained by way of the main Town Hall entrance.
- 2.2.3 The 1893 deed refers to the Victoria Hall and "the rooms and offices belonging thereto", but does not identify the extent of the property and there is no plan attached to it. The trustee has identified the area that it believes to be held on trust, being the Victoria Hall and the Prince's Hall. This does not, for instance, include the kitchen area adjoining the Prince's Hall. This has not been disputed, but those making representations suggests that the area is larger than just these two halls. Research by the Friends suggest that "the rooms and offices" include other rooms, such as the Artists Rooms and the cloakrooms/toilets. It points to the subsequent 1899 extension and also suggests that the Charity will have the benefit of easements through the Town Hall. The size of the trust property is particularly important since the premium for the disposal of the Town Hall is to be apportioned between the Council and the Trust on the basis of floor area.

- 2.2.4 I note that in 2016 an application was made to register the Town Hall as an asset of community value. No bids to purchase all or part of the property were made by or on behalf of the community within the relevant six-month timescale required.
- 2.2.5 The Commission considers that the property is “designated land. “Designated land” is a term used in the 2011 Act and refers to land which is settled on specific charitable trusts and is required to be used for a particular purpose(s) of the charity. In this case, the land is required to be used for the purposes set out in the 1893 deed.
- 2.2.6 It is relevant that there was no accompanying endowment for the maintenance of the property and no reserves have been accumulated<sup>1</sup>. It appears that, since at least 1936, repairs, maintenance and major renovations have been undertaken by the Council from its own resources. The Commission understands that, apart from routine maintenance work, there are significant overdue building repair works. The Council’s Leader has told the Commission that “the budget is no longer there for the Council to subsidise the building continuing to open”.

### 2.3 The Trustee

- 2.3.1 The original trustee was the Local Board for the District of Ealing, being the local authority at the time. This became an urban district council in 1894 and then, by virtue of various reorganisations of local government, the functions of the local board are now exercised by the present Ealing Council. I understand the area of the modern London Borough of Ealing to be larger than the original area as a result of local government re-organisation in 1965.
- 2.3.2 As mentioned above, the Council has not operated the Trust as a charity and has therefore not historically managed the conflict of interest that exists between its corporate role as local authority and its role as charity trustee. It now seeks to manage this by acting through its General Purposes Committee. I note that this committee does not contain any independent members; they are all members of the Council.
- 2.3.3 The draft Scheme provides that Ealing Council would continue to be the trustee of the Charity for all purposes.

### 2.4 The proposals

- 2.4.1 Since 2014, the Council has been looking to dispose of the Town Hall. The building needs repair and refurbishment and, with current funding pressures on the Council, it considers that it is unaffordable for the Council to refurbish it. It ran a competitive tendering process for the redevelopment of the building, including the trust property. Following this, in 2016, the Council entered into a deal with the company Mastcraft. I note that the Register of Companies issued Mastcraft with a notice for compulsory strike off on 31 March 2020.
- 2.4.2 Under the proposals, set out at 2.4.4 below, the Town Hall (including the charity’s trust property) would be disposed of on a 250-year lease. Mastcraft has established a company called Surejogi Ealing Town Hall Limited (“the Company”) to redevelop the building to provide a hotel, restaurant and leisure facilities. Part of the Town Hall

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<sup>1</sup> I note that, when the organ was disposed of in 1957, the proceeds were donated to local charities and not invested.

will be sub-let back to the Council in its corporate capacity to use for its own purposes and the Victoria Hall will be sublet back to the Council as trustee. The Charity will lose its freehold interest in its property and will not receive any replacement land, other than a limited sub-lease of the Victoria Hall and sub-sub-lease of the Queen's Hall.

2.4.3 At the time when the re-development was agreed, the Council was not aware of the Charity's existence. Therefore, no consideration was given as to whether the proposal was in the Charity's best interests, including whether there were other alternatives to the deal with Mastcraft that might better suit the Charity.

2.4.4 The proposals are:

- The Town Hall would be leased for 250-years to Mastcraft at a premium of £2,500,551 and annual rent of £250,000. This would include all of the charity's property. The Charity would receive a proportion of the premium and annual rent, worked out on the basis of the charity's percentage ownership of the Town Hall.
- The developer would grant the Charity an underlease of the re-developed Victoria Hall. This Hall will be reduced in size, including the loss of backstage facilities. The Charity would have use of this property under "community use" arrangements<sup>2</sup> to be set out in the lease as an enforceable covenant. The arrangements would allow qualifying community groups to hire the premises at set rates to be reviewed after 10 years, but on the basis that they remain affordable. The Council has said that these arrangements are designed to closely mirror current use by the Trust. Mastcraft would be responsible for repairs and maintenance of the property under the terms of the lease.
- The Council owned Queen's Hall would be 'swapped' for the Charity owned Prince's Hall, which is required by the company for its hotel. The Queen's Hall would be sublet by the developer to the Council in its corporate capacity, who would then sublet it to itself as trustee at a consideration of £1.

2.4.5 The Trustee carried out two consultations between November 2017 and May 2018 to which 275 representations were received. Although this process has been described as flawed by some of those making representations to the Scheme, it was carried out as part of the Trustee's fact finding to ensure that it was properly informed and not as part of a legal process.

### **3. Why a Scheme is needed**

3.1 If the proposals go ahead, all of the charity's land will be disposed of.

3.2 The Trusts of Land and Appointment of Trustees Act 1996 (TLATA) provide trustees with the powers of an absolute owner, which include the power to dispose of property. However, this is restricted by section 62 of the Charities Act 2011 ("section 62"). Section 62 explains the circumstances in which the original purposes of a charity can be altered to allow the property to be applied for a different purpose. This

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<sup>2</sup> These were originally set out in a Community Benefits Statement in the 'section 106 agreement' between the Council and the developer, made under section 106 of the Town and Country Planning Act 1990 and setting out the principles for community use.

is because the trustee is not acquiring an alternative property for carrying out the same charitable activities set out in the 1893 deed.

- 3.3 To alter the charity's purpose, the court or the Commission must make what is known as a "cy-près scheme". "Cy-près" means "as near as possible" and a cy-près Scheme is a legal arrangement that allows charitable property to be applied for charitable purposes which are similar to the original purpose(s). Such a Scheme can only be made in the circumstances set out in section 62.
- 3.4 If the trustees of a charity's consider that their charity's property requires to be applied cy-près, they are under a legal duty to apply to the Commission (or the court) for a Scheme under section 61 of the 2011 Act.
- 3.5 The Commission must be certain that one or more of the circumstances set out in section 62 apply and that therefore a cy-près occasion has arisen. Only then can it proceed to make a Scheme.
- 3.6 When making a cy-près Scheme, the Commission can provide for the charity's property to be applied for such charitable purposes as it considers appropriate, but it must have regard to the matters set out in subsection 67(3) of the 2011 Act. These are:
  - (a) the spirit of the original gift;
  - (b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes; and
  - (c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.
- 3.7 To be clear, if a cy-près Scheme authorises the disposal of designated land, section 67 does not require it to be replaced.
- 3.8 In this case, the Commission has accepted the trustee's argument that a cy-près occasion has arisen under s62(e)(iii) – "Where the original purposes, in whole or in part, have, since they were laid down ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the appropriate considerations". The "appropriate consideration" means:
  - (a) (on the one hand) the spirit of the gift concerned, and
  - (b) (on the other) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes.
- 3.9 The Scheme in draft provides for a new charitable purpose and authorises the land transactions explained above.
- 3.10 Even if a cy-près Scheme was not required, the Commission would need to authorise the arrangements whereby the Council in its corporate capacity is (indirectly) swapping the Prince's Hall for the Queen's Hall. This is because of the Council's conflict of interest.

#### **4. Decision**

##### **4.1 The object of the Charity**

- 4.1.1 I consider that the existing primary object of the charity is to provide facilities for recreational and other leisure-time occupation by members of the public in Ealing and its neighbourhood in the interests of social welfare.
- 4.1.2 Whilst it is clear that the original purpose of the charity was for the Victoria Hall to be used for the purpose set out in the 1893 deed so long as it continued to exist, this does not mean that the provision and maintenance of the Victoria Hall is part of the charity's purpose. Whilst maintaining the Victoria Hall in a suitable condition to enable it to be used by the community is implied in the purpose, this does not extend to preserving it. A community building could be provided on other land in Ealing.
- 4.1.3 It has been argued by those opposed to the proposals that the preservation of the Victoria Hall is integral to the purpose of the charity. The Commission has been referred to a case in the Court of Appeal<sup>3</sup>. This referred to the situation where "the qualities of the property which is the subject matter of the gift are themselves the factors which make the purposes of the gift charitable". In the judgement, Dillon LJ gave examples of such property, including a trust to retain for the public benefit a particular building for its architectural merit.
- 4.1.4 It is true that the property is now historic and grade 2 listed. Many of the representations in respect of the Scheme refer to the importance of preserving the Hall and it is clearly a much-loved building. Nevertheless, I do not think that the purpose of the trust included the preservation the building for the public benefit. I do not therefore accept the argument that the preservation of the Victoria Hall is integral to the purpose of the Charity.

#### 4.2 Whether a cy-près occasion has occurred

- 4.2.1 As mentioned above, the Trustee considers that a cy-près occasion has arisen under s62(e)(iii). It considers that the Charity is not self-sufficient and the Council in its corporate capacity cannot continue to subsidise the running and maintenance of the Halls.
- 4.2.2 As the Commission's guidance makes clear<sup>4</sup>, "the circumstances which permit a cy-près application of a charity's property are not restricted to 'failure' and therefore the trustees do not necessarily have to demonstrate that the charity's purposes are incapable of being carried out or wholly impracticable, particularly when current social and economic circumstances are also taken into account".
- 4.2.3 The charity does not have an endowment fund or income producing property and therefore the cost of providing and maintaining the Halls must be met from letting fees, supplemented where possible by grants or other fundraising. This will include (1) day-to-day running costs, such as administration and cleaning, (2) regular routine maintenance, (3) cyclical maintenance, such as periodic re-painting and the replacing of furniture and fittings and (4) extraordinary maintenance to extend the life of the building, such as in replacing the roof or providing disabled access. Given this is an historic building, it is inevitable that costly repairs will be required in the future. Over previous years, the Council has paid all of the costs out of its corporate funds. Whilst the Council is to be criticised for not preparing separate charity accounts to provide evidence of its subsidies, it seems likely that the Council has significantly subsidised the maintenance and operation of the facility, particularly in respect of major

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<sup>3</sup> Oldham BC v Attorney-General [1993] Ch 210 at 219B

<sup>4</sup> Operational Guidance OG 62 Application of property cy-près at 1.2.

renovations, over many years. Now that the Council is aware that the property is owned by a charity and given the council's finances, this kind of support will not continue in the future. I have not seen any evidence that the Halls could be self-sustaining.

- 4.2.4 Even if the Charity's property was removed from the proposed re-development of the Town Hall, the rest of the building (other than that sub-let to the Council) will be operated by a commercial company. The Charity would not therefore be able to rely on the Council to provide on-site services. Further the main entrance to the Victoria Hall is via the staircase in the Town Hall, which may not be available for use. Whilst the Friends claim that the Charity is likely to have an easement through the Town Hall building, there is no evidence of this. Any works required to provide alternative access and make the charity self-sustaining from the rest of the building would have to be at the Charity's expense and it does not have funds available for this purpose.
- 4.2.5 The Council argues that the trust property is effectively 'landlocked' because it was built as an integral part of the construction of that wing of the Town Hall complex. It says that most of the ancillary facilities needed to deliver some of its activities (kitchens, storage, bar area, cloakroom, toilets, lifts etc.) sit within the Council's (statutory) footprint – although the Friends claim that the toilets are part of the Charity's property. It also claims that the restricted independent access to the trust property mentioned above would not meet required standards.
- 4.2.6 I also think it questionable as to whether the Victoria and Prince's Halls continue to provide facilities that are "suitable and effective in the light of current social and economic circumstances". I note, for instance, that the Victoria Hall is described on the Council's website as a "grand Gothic Revival style hall" suitable for dining events and dances. It is not a charitable purpose to provide facilities for corporate conferences and other events and private parties – although they could be accommodated at times when use for charitable purposes is not required to raise funds for the charity. Although the Commission has no expertise in the provision of community facilities, it seems reasonable that a property provided in Victorian times is not necessarily going to meet the diverse recreational needs of the Ealing public in the modern age.
- 4.2.7 I therefore consider that the circumstances provided for in s.62(1)(e)(iii) of the Charities Act 2011 exist. I agree that a Scheme can be made which would authorise the disposal of the Victoria and Prince's Halls, but only if the property realised can be applied for charitable purposes that are more suitable and effective than the original purposes, regard being had to the matters in s67(3). I deal with this below.

#### 4.3 Applying the property cy-près

- 4.3.1 As mentioned at 3.6 above, the Commission must, in deciding how the property should be applied, have regard to the matters set out in section 67(3).
- 4.3.2 The Commission must firstly have regard to the spirit of the original gift. I have concluded that the spirit of the gift is the provision of facilities for recreation and other leisure time occupation in the interest of social welfare for the public of Ealing and its neighbourhood.
- 4.3.3 Secondly, the Commission must have regard to the desirability of securing that the property is applied for charitable purposes which are close to the original purposes.



The original purpose was the provision of facilities in Ealing for the purposes set out in the 1893 deed. I do not consider that this has to be in the Victoria and Prince's Halls, but suitable facilities should be available somewhere in Ealing.

4.3.4 Thirdly, it is necessary to consider whether the purposes are suitable and effective in the light of current social and economic circumstances. In doing so, it is necessary to consider changes since the time that the Halls were built. It is evident from the charity register that there is a continuing need to provide facilities for recreation and leisure time occupation in the interest of social welfare. In respect of this Charity, relevant factors include:

- What demand is there in the area for recreational/leisure time facilities?
- What kind of facilities are required in the modern day?
- Would the refurbished facilities in the Town Hall building adequately meet current needs?
- Are there individuals/groups who need facilities, but not of the type that will be provided by the refurbished halls?

4.3.5 I cannot see that any thought has been given to what provision should be made in Ealing in current social and economic circumstances and whether the present proposals meet public needs. Importantly, I have not seen any proposals for using the premium that the Charity will receive from the disposal and the annual rent. The premium will be permanent endowment and must be retained, either by acquiring new facilities or by being invested to produce an income.

4.3.6 As at 4.2.7 above, I agreed that the cy-près occasion has arisen on the basis that the property no longer provides a "suitable and effective method of using the property". Therefore, the Commission needs to consider whether the changes facilitated by the Scheme will provide a more suitable and effective method of using the property.

4.3.7 Factors that would make the use of the property following the making of the Scheme more suitable and effective in meeting the charitable purpose include the following:

- (a) The Charity is relieved of the financial burden of the upkeep and maintenance of the Victoria Hall; this will in future be the responsibility of the Company. It will also be under a duty to renew and replace fixtures and fittings as necessary.
- (b) The Victoria Hall will be renovated at the expense of the Company.
- (c) The Charity will still have access to the refurbished Victoria Hall for use by qualifying community groups at preferential rates on (potentially) 355 days a year.
- (d) A working group will be established, which may co-opt members from the community, to monitor and review the use of the Victoria Hall in accordance with the Scheme.
- (e) The Charity will obtain a sub-lease in the Victoria Hall and a sub-sub lease in the Queens Hall.

- 4.3.8 Factors that make the use of the property less suitable and effective in meeting the charitable purpose include the following:
- (a) A 250-year lease is realistically a permanent disposition of the property. The charity will therefore no longer have any freehold designated land and will not have full control over the use of the property that it receives under sub-leases.
  - (b) I cannot see that any consideration has been given as to whether the proposals are the best that can be obtained for the Charity - the terms of the disposal were agreed by the Council in its corporate capacity before it realised that the Halls are held on charitable trust. The report and valuation prepared by for the Council by Sanderson Weatherall dated 9 September 2019 does not do this, having been prepared on the basis of the proposed transaction. Although the proposals were considered by the General Purposes Committee acting as trustee in September 2019, it consists entirely of members of the Council and is inherently conflicted.
  - (c) Under the protocol, it will be the operator of the hotel who decides who can hire the facilities - not the Trustee. This could be detrimental to the Charity, particularly as the operator does not have to give priority to community use and there are no reserved times for community use. Given that hirers would access the facility through the hotel and use its facilities, the hotel may be reluctant to let the facility to certain groups that it did not want on its premises or prioritise use by one of its customers over community use. Further, the operator will have no incentive to encourage community use and potentially could discourage it. It is possible that certain community groups may be reluctant to hire facilities in, what I understand will be, a boutique hotel.
  - (c) If, despite the covenants, the hotel operator refused to let the hall to community groups, it is not clear how this could be enforced. Whilst it would seem to fall to the Council in its corporate capacity as landlord to enforce the community use, it may have no incentive to do so. The council as trustee would not have any funds to take legal action and it seems unlikely that the Council as trustee would act against the Council as landlord to enforce the community use.
  - (d) The Halls will only be available for hire by, basically, registered charities and non-profit community groups with the majority of their members resident in Ealing. Whilst this may be a convenient way for the hotel to check whether a group is entitled to the reduced charges, this would potentially preclude other users.
  - (e) The income from letting the Victoria Hall will go to the private company, Surejogi. Whilst it will bear all of the costs of making the property available, any 'profit' will stay with the Company and will not be available for application for the secondary purpose.
  - (f) The refurbished Victoria Hall will no doubt provide function room facilities appropriate to a boutique hotel. Whilst this may be suitable for use for events such as a charity dinner dance fundraising event, it may not necessarily be the most suitable type of venue for recreational and leisure time use in the modern day. I have not seen any analysis of this.

- (g) Although one of the benefits of the transaction has been presented by the Council as being the preservation of the Victoria Hall, this is not an object of the Charity.
- (h) The 'swap' of the Smaller Queens Hall for the Princes Hall will take place before the transaction with the Company is completed. Since the apportionment of the premium and rent will be on the basis of floor space, this means that that the Charity will receive a reduced premium and rent to what it might have been entitled if the swap had not taken place.

4.3.9 Many making representations do not consider that the Queens Hall is a suitable replacement for the larger Prince's Hall with its split levels. However, I have not seen any assessment of which of the Halls provides the type of facility and space that best meets the needs of the public for recreational and leisure time occupation. Although I am in no doubt that the 'swap' is as a result of the Company wanting to convert the Prince's Hall into a hotel gym and swimming pool, I consider this to be a neutral factor since size is not the only criterion to consider.

#### 4.4 The terms of the Scheme

4.4.1 I have considered the following in relation to the Commission's Scheme as drafted:

- (a) There should be provisions relating to the premium and for applying the future income of the charity. It needs to be clear that the premium will constitute permanent endowment and must either (1) be used to provide a replacement property or other facilities in furtherance of the object or (2) invested to produce an income.
- (b) There should be an obligation on the Trustee to appropriate the Queen's Hall for the purpose of the Charity. Although the Charity will only have a limited interest in this property under the sub-sub lease, this will still constitute permanent endowment and this should be reflected in the Scheme.
- (c) There should be a mechanism for managing conflicts of interest which may arise between the Council and the Charity. Given that all members of the General Purposes Committee could be conflicted, there needs to be an arrangement whereby there are independent co-optees to form a quorum where the elected councillors have, or may have, a conflict of interest.

#### 4.5. Conclusion

4.5.1 As mentioned at 4.2.7 above, I consider that the circumstances provided for in s.62(1)(e)(iii) of the Charities Act 2011 exist. I therefore agree that a Scheme can be made to authorise the disposal of the Victoria and Prince's Halls, but only if the property realised can be applied for charitable purposes that are more suitable and effective than the original purposes, regard being had to the matters in s67(3).

4.5.2 Having considered the proposals, I have concluded that the Scheme as drafted and the proposals negotiated by the Trustee for the future use of the Charity's property cannot be said to be a more suitable and effective use of the property than the original purposes and create a significant risk to the trust property.

4.5.3 I therefore consider that the Trustee should be given the opportunity to re-consider how the Charity's property, if the Halls are disposed of, can be put to more suitable and effective use for the purposes of the Charity. In particular, further thought needs to be given to the following:

(a) The extent of the charity's property

It is important to ensure that the Charity is receiving the right proportion of the sale premium and annual income in relation to its floor area. Consideration should also be given as to why the Charity is potentially losing out in terms of the premium that it will receive as a result of the swap of halls, which is being made for the Council's convenience as a result of the deal it negotiated.

(b) The needs of the public in Ealing

Consideration should to be given to the public's need for facilities for recreation or other leisure-time occupation, having regard to current social and economic circumstances and the type of facility required to meet those needs. For instance, a study could be commissioned from relevant experts to provide this information. This could include consideration of the extent that the renovated Victoria Hall and the Queen's Hall will provide suitable facilities for recreational and leisure time occupation and the type of use that might be made of them.

(c) Use of the premium

The Commission needs clarity about how the Trustee proposes to use the premium, in the light of any study commissioned as above and for what purpose the interest from its investment and its share of the rent will be used. For instance, whether a new property should be purchased for use for the objects, such as a community hall in an area of Ealing without any such facilities.

(d) The Charity's future use of the Victoria Hall

Thought needs to be given as to how the community protocol can be strengthened to ensure the hotel will be obliged to let the facilities for community use, how this will be monitored by the proposed committee and how it would be enforced.

(e) Managing conflicts of interest

Procedures need to be implemented to manage the conflict of interest which may arise between the Council and the Charity.

4.5.4 If the trustee wishes to continue with its cy pre application, it needs to present the Commission with a revised case that demonstrates that the proposals now amount to a more suitable and effective use for the Charity's property. Subject to consideration of this, and having regard to the matters in section 67(3) of the 2011 Act, I consider that the existing draft Scheme can be modified and made. I also consider that, if this is done within one calendar year, the notice already given will be sufficient for the purpose of section 88 of the 2011 Act and no further notice will be required. However, those making representations would need to be notified that the Scheme was being made since they should be aware of the ability to appeal to the First-tier

Tribunal (Charity). If, on the other hand, the Trustee decides not to revise its case, the Scheme can be withdrawn.

4.5.5 I have considered whether, under s.70(8) of the Charities Act 2011, the Scheme is so contentious in character that it would be more fit for the case to be adjudicated on by the court. Whilst there is opposition to the proposals, particularly by those opposed to the disposal of the Victoria Hall, I do not consider making the Scheme itself to be contentious.

4.5.6 As mentioned at 4.5.4 above, those opposed to the Scheme, if made, may be able to challenge the decision in the Tribunal by persons entitled to appeal. More information is available on the Tribunal's website:

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/charity/appeals.htm>

Further information should be provided to those who made representations if a Scheme is subsequently made.

Neil Robertson

3rd April 2020