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**DARLINGTON LIBRARY SERVICE**

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**Responsible Cabinet Member - Councillor Nick Wallis,  
Leisure and Local Environment Portfolio**

**Responsible Director - Paul Wildsmith,  
Director of Neighbourhood Services and Resources**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To update Members on progress and developments following decisions made by Council in June 2016. To clarify the legal status of the Crown Street land holding. To advise of a potential legal challenge. For Cabinet to agree a way forward in response to the threatened litigation and the impact on current decisions about the library service.

**Summary**

2. Following the meeting of Council on 29 June 2016 work has been underway to progress the decisions taken. Further details are set out in the report.
3. Members will recall that original documentation relating to the Crown Street Library land holding was lost some years ago but that a 1983 statutory declaration had stated that part of the land was held subject to a covenant that it should be used as a library. Despite the existence of this document, and searches made, officers were unable to establish the existence of a covenant. Members were updated in June about the position and the possibility that the land may be held on a trust rather than being subject to a covenant, but at that time the position was unclear. Further clarification has now been obtained following extensive enquiries by the Council about the nature of the land holding from the Charities Commission.
4. It is now clear that what had been previously described as a covenant in the statutory declaration more accurately should have been a reference that Crown Street was held on trust for the purposes of a public library. This has implications for the way in which decisions about the Crown Street need to be taken. Any decision about the disposal of Crown Street will need to be taken by the trustee of Crown Street and may in addition need the permission of the

Charities Commission. The sole corporate trustee is Cabinet. Further details are set out in the report.

5. Since the Council meeting in June further work has been on-going regarding the design, and the way that the new service will be delivered at the Dolphin Centre. Work has also been underway to develop the proposals for the Centre for Local Studies. Additional focussed consultation will be required regarding the developing detail of how the Dolphin Centre library will serve the needs of current and future users.
6. A pre action letter threatening judicial review proceedings of the decisions made by the Council about the library service has been received. Further details about this potential legal challenge are set out in the report.
7. It is officers' view that while the legal challenge is defensible, given the risks, expense and delay created by litigation and the developing situation since June, a more considered response is to continue the development of the proposals for the Dolphin Centre, carry out further focussed consultation on the service in this location and then for a more detailed report to be presented to members. At the same time the Cabinet as trustee can meet to consider the implications should the library service relocate to the Dolphin Centre and the future of the Crown Street building.
8. This will be a more productive use of time and resources instead of putting energy into defending a Judicial Review and while those proceedings are live, being constrained to further progress any aspect of the decisions made in June.
9. This means that the decisions taken by Council on 29 June 2016 about the Library service will not be actioned as detailed in that report and library provision will continue as it is at the moment (with the exception of the mobile Library Service, see below), pending further decisions being taken.
10. Preparations to decommission the mobile library service from the end of September 2016 are advanced (staffing, service user information, alternative Housebound Service arrangements). There would therefore be challenges to maintain the service as currently operating in the two months prior to Members receiving a new report on the library service. It is therefore proposed that the vehicle is retained and the role and contribution of a mobile service is included when further decisions about the library service are being considered.
11. It should be understood that because of the financial position faced by the Council, the efficiencies will still need to be delivered and that the proposals made in February concerning the Library Service that were consulted on, including those relating to the relocation of the Central Library Service have not been withdrawn, but will be brought back for a further decision.

## **Recommendation**

12. It is recommended that Cabinet :-

- (a) Note the work done to progress the decisions made in June.
- (b) Note the clarification about the nature of the land holding of Crown Street and the implications that this has for any decision relating to the use of Crown Street Library and the role of Cabinet as Trustee.
- (c) Agree that the decision made by Council on 29 June 2016 will not be implemented as set out in the report (with the exception that the mobile Library Service will be suspended from 1 October 2016 pending further decisions) and that further work on the design and operation of the library service at the Dolphin Centre will be undertaken
- (d) Agree that members receive updated reports on the library service (including about the relocation of the central library from Crown Street to the Dolphin Centre) for new decisions to be made about Library provision
- (e) Agree with the proposed response to the threatened judicial review claim outlined in this report.

## **Reasons**

13. The recommendations are supported by the following reasons :-

- (a) To keep Cabinet informed of progress and developments since June 2016 and the work that needs to be undertaken.
- (b) The need to inform Cabinet about the clarification of the Crown Street land holding and the implications of it being held on trust for a library.
- (c) The need for Cabinet to agree a position about how the Council should respond to the potential judicial review claim and the implications that flow from such a decision.

**Paul Wildsmith**  
**Director of Neighbourhood Services and Resources**

## **Background Papers**

No background papers were used in the preparation of this report.

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S17 Crime and Disorder	The content of this report does not impact on crime and disorder.
Health and Well Being	The library service does have an impact on the health and well-being of people who use the service.
Carbon Impact	Not applicable.
Diversity	Equality Impact Assessments were carried out with regard to the proposal and the outcome was included in the report Cabinet and Council in June
Wards Affected	All Wards are affected
Groups Affected	All groups that use the library service will be affected.
Budget and Policy Framework	There is no change to the budget and policy framework at this time but this will need to be kept under review
Key Decision	Decisions made about library provision will have a significant impact on library users.
Urgent Decision	This is an urgent decision. The threatened litigation requires a timely response (any proceedings will need to be issued before the 29 September 2016 because of the relevant statutory time limit/time bar)
One Darlington: Perfectly Placed	The library service does impact on a number of the priorities within One Darlington Perfectly Placed.
Efficiency	This report does have impacts on the ability of the Council to deliver efficiencies and savings.

## MAIN REPORT

### Background

14. In February 2016 Cabinet considered the Medium Term Financial Plan (MTFP) reports. The MTFP 2016/17 to 2019/20 Phase 2 report, included a proposal for Crown Street Library to be relocated to the Dolphin Centre. Cabinet agreed that the MTFP proposals should be referred for public consultation.
15. The consultation on the MTFP proposals ran until the end of May 2016. On the 22 June 2016 Cabinet met to agree the MTFP proposals that would be submitted to Council for decision and amongst other matters agreed that it would recommend the relocation of Crown Street Library to the Dolphin Centre.
16. At the meeting of 29 June 2016 a number of decisions were agreed by Members about the Library Service. The decision made in respect of the library service were:-

- (a) To note and approve the Library needs assessment.
- (b) The relocation of the Central Library service to the Dolphin Centre.
- (c) Cockerton Library be closed on 31 March 2017 unless sustainable alternative proposal is agreed before December 2016.
- (d) The Mobile Library Service ceases to be provided from 1 October 2016 and additional work is undertaken to promote the housebound service.
- (e) The capital sum of £1.7m be released to relocate the Library Service to the Dolphin Centre. The procurement of this scheme be delivered in accordance with the Contract Procedure Rules by the Council's Building Services division and that the procurement be designated as non-strategic.
- (f) The Crown Street building be declared surplus to requirements and the Director of Economic Growth in consultation with the portfolio holder for Efficiency and Resources be authorised to dispose of the building, however interested community groups with proposals for use of the building will be considered as part of the disposal process.

### **Update on Progress**

- 17. Since the Council decision, a team of officers have been working on project planning for the establishment of the Council's Central Library in the Dolphin Centre. The designs for the Dolphin Centre Library have been further developed by the team working with a specialist library designer with matters ready for further consultation about the design. The lead "contractor" is the Council's Building Services division who will co-ordinate the work. No contracts have yet been entered into for building works or refurbishment at the Dolphin Centre.
- 18. The mobile library service is due to be decommissioned from 1 October 2016
- 19. The development of a volunteer run library at Cockerton Library is progressing. Officers have met with Cockerton Business and Community Forum who are working alongside Darlington for Culture to draw up plans for the retention of the library on a volunteer model. The subsequent report to Cabinet on the library service will provide further information on this proposal.
- 20. Work is progressing for the move of the Register Office from the Dolphin Centre to the Town Hall. Staff working in the Register Office will relocate to the Customer Services and work is underway in Customer Services to build a strong room for the secure retention of records. The Council Chamber and Foyer are in the process of being refurbished to enable them to be used for ceremonies, but also more generally, as versatile meeting and events spaces. The date for the proposed relocation of Register Office staff is 26 September 2016 with ceremonies in new venue being held from 1 October 2016. The relocation of the

Register Office whilst linked to the library relocation is not solely dependent on it and there will be benefits for the service (public access via Customer Services and opportunities to use new and more versatile ceremony facilities)

21. Staff are aware of the planned changes and some consultation has begun about the changes that are likely as a result of a move of the library from Crown Street to the Dolphin Centre.

## **Legal issues**

### Crown Street land holding

22. The Land Registry title document shows that the Council holds the freehold of the land. It is also stated that as the deeds and documents of title were lost this is subject to any restrictive covenants that may have existed before 9 September 2010 and are capable of being enforced.
23. Members will recall that we possess a statutory declaration made in 1983 by a former Assistant Borough Solicitor which states that prior to records being lost (at some point in 1974) his recollection was that Crown Street was held by the Council, subject to a covenant (over the northern most part of Crown Street) that it should be used for the purpose of a public library for ever.
24. In October 2015 the Charities Commission were forwarded a copy of the statutory declaration and asked whether the property could be held on trust. At the time they said there was insufficient information for them to believe that it was.
25. Despite searches at the land registry no covenant was identified. Searches have been undertaken at the County Durham Archive, with the Charities Commission and the National Archive's at Kew. We conducted a search of Charity Commission webpage, but found no mention of a charitable trust in respect of the library.
26. On 15 June 2016 County Durham Archives advised of a copy of an entry in a Report to Parliament of the Commissioners for Inquiring into Charitable Endowments in the County of Durham dated 1900-1904, which under the heading of 'Public Library', noted a grant of land and buildings at Crown Street, made in 1885 to the Darlington Corporation to hold 'in fee simple upon trust for the purposes of a public library'.
27. By letter dated 22 June 2016, from the Assistant Director, Law and Governance, all Members were advised that notwithstanding the 1983 statutory declaration, about the covenant, it appeared more likely this may have been a mis-description and that what the Assistant Borough Solicitor may have meant to say was that the land was conveyed on trust for it to be used as a library.
28. After the discovery of the extract from the Report to Parliament about Charitable Endowments in County Durham we contacted the Charity Commission to advise

them of the position and for some clarification about how we ought to treat the land holding. On the 21 July 2016 the Charity Commission advised that the land is 'designated land' (land held for a particular charitable purpose) and that we ought to treat the land as being held on trust for the relevant charitable purpose (i.e. for a public library).

29. We have also sought advice from a specialist charities barrister. Her view is that although the building was conveyed in separate tranches, with extensions to the original 1885 building in 1900 and 1930, that given the provenance, the safe view is to consider that the whole of the Crown Street building is held on trust for the use as a public library.

#### Implications of the land being held on trust

30. The Crown Street building being held on trust has implications for the way that decisions are made about the trust property. Any decision about the trust property must be made by the Trustees. Where the land is 'designated land' in some circumstances authority will be needed from the Charity Commission to dispose of the property (more detail below).
31. The current Council is the statutory successor to Darlington Corporation and will have the responsibility as sole corporate trustee from the original 1885 deed of gift. As the Council operates an executive model of decision making, in accordance with the Local Government Act 2000 and the Functions and Responsibilities Regulations, the role of sole trustee will fall to be discharged by the Council's executive - Cabinet.
32. To be clear no meeting has been convened of Cabinet as Trustee to consider the impact of the library proposals and the future of the Crown Street building and similarly no decisions have yet been made by Cabinet as Trustee about the Crown Street building.
33. The decision about the Crown Street building made in June cannot therefore stand as it was not made by the appropriate decision making body. Decisions about the property at Crown Street are distinct from decisions about service provision (the type, level and location of the services provided). The decisions made in respect of the service provision are a separate matter and not one for the sole trustee to make.
34. For decisions to be taken about the Crown Street property Cabinet acting as Trustee will need to meet in that capacity. They will need to consider the current position, the implications and the options for Crown Street should the library service move to the Dolphin Centre. Further work will be needed to develop proposals for Cabinet as Trustee to consider.
35. It is planned to hold a meeting of Cabinet as Trustee as soon as can be practically arranged. Reports prepared for the meeting will be publically available in advance and the press and public will be welcome to attend.

## Potential Judicial Review

36. A pre action letter was received by the Council on 12 August 2016 threatening to challenge the decisions of the Council (made on 29 June 2016) by commencing judicial review proceedings unless the Council agreed not to go ahead with the decisions it had made. The matter of particular concern was about the relocation of Crown Street Library to the Dolphin Centre.
37. The potential claim has been submitted by a Darlington resident who has the benefit of public funding/legal aid.
38. A judicial review is a challenge about the lawfulness of a decision taken by a public body. It is concerned with the legality of the procedure and process followed rather than the merits of the decision that has been made. If the claim is successful it would result in the decisions challenged being quashed. A decision that has been quashed can still be looked at again by Members and new decisions made. Any issues identified in the Judicial Review proceedings would need to be addressed and providing that is done it would reduce the likelihood of any subsequent judicial review succeeding.
39. The grounds of the challenge are based on a number of contentions. These are in outline:-
  - (a) That the Council will not be able to meet its statutory obligations under the Public Libraries and Museums Act 1964;
  - (b) That the consultation was inadequate;
  - (c) That there was a failure to properly consider alternative proposals put forward by Darlington for Culture in terms of a community right to challenge under the Localism Act 2011;
  - (d) A failure to take proper account of the impact of the 'covenant' in respect of Crown Street and the potential costs of maintaining an empty building;
  - (e) Over the accuracy of the projected savings that could be achieved by a relocation,
  - (f) A failure to carry out an assessment of the impact of the proposal on particular groups and concerns about the proposed Dolphin Centre location.
40. The agreed deadline for Council to respond to the pre action letter was the 6 September 2016. The judicial review claim will need to be commenced before 29 September 2016 (there is a 3 month longstop time limit)

## Response to the JR

41. We have sought advice on the merits of the claim from a Judicial Review specialist barrister, and on the basis of initial advice received it was his view that we would have grounds to defend a legal challenge



42. Another factor we have also to consider are other developments since the decision was made in June, in respect of the trust/property clarification and also about the development of design.
43. The clarification of trust/property issue about Crown Street, means that the decision already made by Council about the disposal of Crown Street will need to be put before the Cabinet as Trustee, consultation about the proposals and possibly also the need to involve the Charity Commission (depending on the decisions that are made by the Sole Trustee).
44. The detail presented to Members about the design, and the information of the new service at the Dolphin Centre was presented in outline at the June meeting. Since then work has been underway to further develop the design details and the service provision. Further work has also been underway to develop the proposals for the Centre for Local Studies.
45. The intention was to carry out further consultation on the developing proposals for the Dolphin Centre Service. We also have a continuing obligation to assess the impacts generally but particularly on people with protected characteristics and analyse those impacts to understand if there are adverse impacts and if so how they might be mitigated against. The obligation to consider the impacts on people is part of the Council's public sector equality duty.
46. We could defend and contest the threatened litigation, which would involve litigation risks, expense and delay. During the litigation, which will take a number of months to come to a full hearing, we would be constrained from moving forward on the decisions made in June.
47. However, taking stock of where we are now and given the developing situation since June a more considered response is to continue to, with the development of the proposals, carry out further focussed consultation on how the service will look and operate and then bring matters back to members with the additional information and detail for decisions to be made. This will be a more productive use of time and resources instead of putting energy into defending a Judicial Review and while those proceedings are live being constrained to further progress any aspect of the decision taken in June.
48. What is therefore proposed is that the decisions made by Council about the Library Service are not actioned as detailed in the report and that further work is done to refresh the proposals submitted to members in June. In particular a number of work streams can move forward;
  - (a) To further develop the design details, service configuration and understand the impacts of the Dolphin Centre Library.
  - (b) To continue with the discussions about Cockerton Library and a volunteer operating model.

- (c) Consideration of the issue of the Crown Street trust property by Cabinet as Trustee and the options for Crown Street and way forward should the Central Library move to the Dolphin Centre.

Preparations to decommission the mobile library service from the end of September 2016 are advanced (staffing, service user information, alternative Housebound Service arrangements). There would therefore be challenges to maintain the service as currently operating in the two months prior to Members receiving a new report on the library service. It is therefore proposed that the vehicle is retained and the role and contribution of a mobile service is included when further decisions about the library service are being considered.

49. A new report can then be presented back to members at an appropriate time, to consider all aspects of library provision with updated detail and the further focussed consultation, for new decisions to be made about the library service. It is not considered that decisions about the service provision need to await decisions made about the trust property. It is hoped that such a report can be considered in November 2016
50. The letter before action has been responded to indicating that, subject to the agreement of Cabinet, it is not proposed to action the decisions made in June about the Library Service, that the status quo ante will be maintained (subject to what has been said about the mobile library service) and that it is the intention for Members to consider proposals for the library service again in the light of further focussed consultation and new and updated information.

### **Timescale**

51. On the issue of timescale, any building work at the Dolphin Centre was likely to take approximately 6 months to complete. Clearly, with the deferment of any decision, it would now seem unlikely that the Dolphin Centre library will be delivered before September 2017, depending on the decisions made and when they are taken.

### **HR implications**

52. Library staff and staff across cultural services have been updated on the current situation and there will be ongoing communication.

### **Financial Implications**

53. If agreed the June decisions will not be actioned and the Council will not be able to deliver the saving in line with the agreed MTFP. There is also the potential for the capital value of the Dolphin Centre project to increase due to inflation. These implications will need to be factored into the next revision of the MTFP, this coming winter. The savings agreed in the MTFP are as follows;

- (a) 2016/17 - £35,000
- (b) 2017/18 - £394,000

- (c) 2018/19 - £442,000
- (d) 2019/20 - £449,000