
FUTURE OF CROWN STREET LIBRARY

Responsible Cabinet Members – All Cabinet

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

SUMMARY REPORT

Purpose of the Report

1. To advise Members of their role as trustee for the Crown Street Library; to give information about Library service decisions; to indicate the impact of a relocation of the library service from Crown Street for the trust property; and, to invite the Trustee to consider possible options for the future of the trust property.

Summary

2. The report recommends that alternative community uses for the Crown Street building be explored with interested parties being able to express an interest in utilising the building for purposes in line with the Will of Edward Pease. Should no suitable use be found then the building will be marketed for sale and the proceeds of the sale utilised to establish a charitable fund which might be called the Edward Pease Endowment Fund. The Fund could be managed by the County Durham Community Foundation (CDCF).

Recommendation

3. The Sole Trustee is recommended to :-
 - (a) Note the current position facing the Trust property.
 - (b) Agree to seek expressions of interest for alternative community uses for the Crown Street building and in default to market the building for sale (with disposal at market value) and establish an Endowment Fund with the proceeds, as set out in paragraphs 38 - 39 of this report.
 - (c) Receive further reports on any proposals received for the future use of the Crown Street building.
 - (d) Delegate to the Director of Neighbourhood Services and Resources responsibility to make arrangements for the consultation (as set out in

paragraphs 34 and 35) and associated work.

Reasons

4. The recommendations are supported by the following reasons :-
 - (a) To enable the Sole Trustee to be in a position to make plans for the Trust ahead of the move of the library service from Crown Street to the Dolphin Centre.
 - (b) To act in the best interests of the Trust.

Paul Wildsmith
Director of Neighbourhood Services and Resources

Background Papers

Cabinet 17.1.17 – The Library Service

Cabinet 7.3.17 – The Library Service

Paul Wildsmith and Luke Swinhoe: Ext 5829/5490

MAIN REPORT

Crown Street Library - background

5. Edward Pease died on 13 June 1880. In his will of 9 March 1876 he left the sum of £10,000 'for the education of the poorer classes in the Borough of Darlington either by establishing or founding or assisting in establishing or founding a free library or scholarship from elementary schools for boys and girls or in such other way as my said trustees shall in their uncontrolled discretion think fit'.
6. The Executors of Edward Pease's Estate were his brothers, Sir Joseph Whitwell Pease and Arthur Pease. In 1884 building work on a library building commenced. On 23rd October 1885 land and building of the library was transferred to the 'Corporation of Darlington' by way of a deed of gift by the executors. In 1885 the Edward Pease Free Library, in Crown Street was opened by Lady Beatrice Lymington, the daughter of Edward Pease.
7. In due course, two extensions to the original library building at Crown Street were built, with further transfers to the Corporation of Darlington in August 1900, and in July 1930.
8. The Land Registry records show that the Council holds the freehold, but reference is made to lost deeds and documents and that restrictive covenants imposed before 9 September 2010 are still enforceable.

9. The original deeds and records for the Crown Street Library were lost a number of years ago (possibly during local government reorganisation in 1974). In 1983 a statutory declaration was made by a former Assistant Borough Solicitor, which states that from his recollection, the Crown Street Library was held by the Council, subject to a restrictive covenant (over the 1885 part of the library building) that it should be 'used for the purpose of a public library forever'.
10. 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'.
11. On the 21 July 2016 the Charity Commission confirmed that they deem the land to be 'designated land' (i.e. land held for a particular charitable purpose) and that the Council ought to treat the land as being held on trust for the relevant charitable purpose (i.e. for a public library) . Advice was subsequently obtained from a barrister (specialising in trusts law) that the extensions of 1900 and 1930, as well as the original 1885 building, should all be considered as held on trust for the use as a public library.
12. The Crown Street Library is a listed building. On 6 September 1977 the Crown Street Library building was listed as a Grade II listed building, under the Planning (listed Buildings and Conservation Areas) Act 1990, for its special architectural or historic interest.

The role of Sole Trustee

13. The library and the land on which it sits was originally gifted to the 'Corporation of Darlington'. The current Council is the statutory successor to Darlington Corporation and will have the responsibility as sole corporate trustee arising from the original 1885 deed of gift.
14. 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.
15. Decisions of matters related to the Crown Street Library building need to be made by Cabinet as Trustee with full regard of their trustee obligations. This is a distinctive role from the one that Members discharge in an ordinary Cabinet meeting.
16. A separate report has been prepared to give Members general guidance and information about the role of Sole Trustee.

Interests

17. Members of Cabinet have already been involved in decision making about the library service (including a decision to relocate the central library from Crown Street to the Dolphin Centre) in their capacity as members of Cabinet and of Council.
18. Declarations of interest (pecuniary – because the decisions being made were likely to effect the future of the Crown Street Library) were made at Cabinet and Council meetings and dispensations to allow participation were granted. Had dispensations not been granted members of Cabinet would have been prevented from exercising their executive role to make decisions about the future of the library service as a whole.
19. In the capacity of discharging their role as sole trustee for the Crown Street Library Trust members will need to declare an interest. This is that they are members of Darlington Borough Council and of Cabinet and thereby have a potential conflict of interest.
20. It is not considered that this will prevent members from making decisions about the Library Trust. The decision to relocate the service from the Crown Street Library has been made. The decisions that need to be made by the sole trustee are about the future of the trust and what happens to the building. In making decisions members will need to act in the best interests of the trust.

Library service decisions

21. Members are referred to the reports that were taken to Cabinet on the 7 March 2017 and Council in 23 March 2017 about the Library Service in Darlington.
22. It was agreed (along with other decisions about the library service) that the library service provided by the Council at Crown Street should relocate to the Dolphin Centre.
23. This decision has implications for the Crown Street building and the ability for Crown Street to continue to operate as a library when the service be relocated.
24. Following the decisions made the Charity Commission were advised about the decisions taken by the Council (see letter dated 6 April 2017 – **Appendix 1**) and the need for a meeting of the sole trustee to be convened. They replied by email dated 12 May 2017 (**Appendix 2**).

Implications for the Trust Property

25. The trust in respect of Crown Street comprises the land and building only. There is no endowment that provides funding to support the costs of running a library service. For the library to continue to operate as a functioning library facility it would need the continued service support from the Council
26. The decision taken in March 2017 (by Cabinet and Council) to relocate the Crown Street Library service to the Dolphin Centre will mean that Crown Street will no longer be able to continue to operate as a library.

27. When this happens the Trust will be left with a closed building with no staff, books or resources to fund the operating costs of the building. The very significant implication is that the trust property will no longer be able to fulfil its original objective.
28. Although the implementation of the decisions to relocate the library service from Crown Street is not projected to take place until April 2018 the Sole Trustee needs to consider what this would mean for the trust and the possible options that are open to the trust.

Options for the Future of the Crown Street Building

29. There are two alternatives for the building, they are:
 - (a) Community use – disposal to a community organisation with aims compatible with those set out in the will. This would allow the building to continue to be used for the benefit of the population of Darlington and would, if possible, adhere to some or all of the aims set out in the Will.
 - (b) Open market sale - sell the building for the best price that can be obtained and use the receipt to create an endowment fund. This could be utilised to further the aims set out in the will of Edward Pease when bequeathing the funds that originally were used to build the Crown Street Library (see paragraph 8 above).
30. If the building were disposed of for community use then (subject to permission from the Charity Commission) then a possible model for disposal could be a long lease, but with provision that the building would revert back to the Council to hold on Trust should the community organisation cease to operate the building in accordance with the terms agreed in the lease. Prior to agreeing such arrangements Trustees will need to assure themselves that any proposal is financially viable. How competing proposals are evaluated will depend on the volume and nature of the proposals received.
31. An independent valuation of the Crown Street building is in the process of being obtained.

Engagement and consultation and decision making

32. Given the importance of the decision that Trustees face it is important to 'cast the net wide' and look at all possible options for the building so consideration can be given to all proposals before coming to a final decision on how to proceed.
33. It is suggested that Sole Trustee may first want to invite expressions of interest from community groups, charities and organisations who may have proposals to take over the building and utilise it for community use before considering open market disposal. This approach accords with the approach to disposal where, like the Crown Street Library, an asset is listed as an asset of community value.

34. The public will also need to be consulted about any proposed uses of the building or changes to the trust so that the views of the public can be taken into account by the Sole Trustee. An indicative timetable is set out below:

Action	Date
The Trust agrees to request expressions of interest from community groups and voluntary sector organisations in taking over the Crown Street building for the purpose of providing services, support or cultural activities for the public of Darlington	Deadline for Receipt 31 August
Trustee meeting – to consider expressions of interest received and consider suitability and sustainability of the proposals. Trustees will then decide which, if any, proposals will go forward for consultation.	October
Consultation on options for the use of the Crown Street Building and the proposal to establish an Endowment Fund.	October/November
Trustee meeting – to make final decision following consultation and refer the final decision to the Charity Commission for approval.	December

35. If no expression of interest for community use of the building is received from community groups or voluntary sector organisations then the public consultation will be solely about the open market disposal of the building and the options for the endowment realised by the disposal. In such circumstances the consultation will commence as soon as is practicable after the expiration of the deadline for receipt of expressions of interest.

Open market sale and new trust/endowment

36. If no appropriate alternative community use for the Crown Street Library is achieved and the building is sold on the open market then consideration needs to be given as how any proceeds of sale will be used.
37. It could aligned to the concept of library provision be to create a library endowment fund to provide ‘over and above’ funding for the library service. It is suggested that this may not be sufficiently visible from the statutory provision that is funded by the Council.
38. There is also an opportunity to consider a use of a wider nature that accords with the aspirations of the Will which would allow Trustees maximum discretion in the future use of the Fund. For example, the purposes might read:
- “The fund is established to be utilised for supporting education for under privileged young people within the Borough and to provide support for innovation in the field of education.”
39. Any endowment fund established could use the name of Edward Pease to help in the association of the original bequest. So for instance and educational endowment

would be called the Edward Pease Education Fund.

Management of Endowment Fund

40. Should an Endowment Fund be established it is proposed that it is managed by County Durham Community Foundation (CDCF) who assist with all other Council Trust Funds. Initial discussions in advance have taken place with CDCF and they are willing to undertake the role of Trustee of the Fund. It is anticipated that CDCF will be able to grow or match fund the Trust Funds therefore increasing the sum available to applicants.

Legal Advice

41. Members are reminded of their role as Trustee and the need to have regard to guidance about trustee decision making (see the separate report on this).
42. The Crown Street Building has been classified by the Charity Commission as 'designated land'. This is land held for a particular charitable purpose.
43. As the original purpose of the trust can no longer be performed at Crown Street (and with library provision being adequately provided elsewhere) an application can be made to the Charity Commission to alter the terms of the original trust. This would allow the purposes to be varied to enable the property to be used for a different purpose, but allied to the original charitable aim (the cy pres doctrine – by changing the purpose to be 'close to' the original charitable purpose).
44. It is also possible to dispose of land held on trust. It could be to another charity with educational or recreational purposes, close to the aims of the Library charity. In such a case disposal could be at less than market value or nil value.
45. Where the land is being disposed of for a purpose which is not close to the original charitable aims this would need to be for the best price obtainable. This would require consent from the Charity Commission. The proceeds of sale would then be held to be used for a purpose allied or close to the original charitable aim.
46. Disposal will not be possible without the prior consent of the Charity Commission.
47. Asset Community Value – the building is listed as an asset of community value in accordance with the Localism Act 2011. This means that notice must be given of any intention to dispose of the building in order to allow community interest groups to bid. It is suggested that after the Trustee meeting the intention to dispose of the building be advertised in order to highlight a potential disposal of an asset of community value. Members should note that disposals of community assets by way of gift are exempt from the provisions of the Localism Act 2011 [S.85(5)(a)].



NEIGHBOURHOOD SERVICES & RESOURCES GROUP

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Charity Commission
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By e mail

Date : 6 April 2017
Please ask for : Mr Luke Swinhoe
Direct Line : 01325 405490
Email address : Luke.swinhoe@darlington.gov.uk
Your Reference :
Our Reference : LS/HoLS/Lib
Document Name : 270320-Library

Dear Sir or Madam,

Crown Street Library, Darlington

We have previously been in correspondence with you about the Crown Street Library.

Background

Crown Street Library opened in 1885 following a bequest of £10,000 from Edward Pease, who died in 1880.

On 23rd October 1885 the land and library building was transferred to the 'Corporation of Darlington' by way of a deed of gift by the two executors of the Estate. Darlington Borough Council is the statutory successor to the Corporation of Darlington.

Original documentation relating to the transfer was lost in the 1970's.

Last year we requested your view about whether the Crown Street Library should be treated as land held on trust (our email of 24 June 2016, 12:56). This was following the discovery in June 2016, by the County Durham Archive, of an entry in a 'Report to Parliament of the Commissioners for Inquiry into Charitable Endowments in the County of Durham (1900-1904)', which under the heading 'Public Library' noted a conveyance of land and buildings at Crown Street, made on the 23 October 1885 to the Darlington Corporation to hold 'in fee simple upon trust for the purposes of a public library for the borough of Darlington.'

By your email of 21 July 2016 (10:07), Mrs Paula McNicholas replied to our request for clarification, advising that the property was given 'on trust' for a public library which is a charitable purpose and should be treated as designated land.



You should note that the Crown Street Library was extended in 1900 and 1930, by deeds of gift. It is our intention to treat the whole of the library as governed by a trust

The Library Service

Since opening in 1885 the Crown Street Library has been the central or main library in Darlington.

Because of very difficult financial challenges facing the Council, in 2016 all Council services were subject to review including the library service. As well as a proposal to discontinue the mobile library service and to close the Cockerton Branch library it was proposed to relocate the main library from Crown Street to the council's main sports centre (the Dolphin Centre) which is situated in the town centre.

Decisions were taken by Cabinet and Council in June 2016 about the library service proposals. Only after the June decisions were taken was clarification about the 'trust' received. Following the clarification from Mrs McNicholas, we were in the process of looking at convening a meeting of the Sole Trustee and also taking a further report about the matter to Cabinet.

In August 2016 the library service proposals, in particular the proposal to relocate the central library service from Crown Street Library to the Dolphin Centre, was subject to a threatened legal challenge. In the event it was decided not to implement the library proposals but to continue to develop them, to update members about the Crown Street building and for all the proposals to be brought back to members, with the benefit of additional information and detail, to enable new decisions to be made.

Further decisions about the Library Service have been made in March 2017, by Cabinet on 7 March 2017 and Council on 23 March 2017.

Copies of the reports considered by members are available from the Council website

Cabinet - <http://www.darlington.gov.uk/your-council/democracy/meeting-details/?id=1992>

Council - <http://www.darlington.gov.uk/your-council/democracy/meeting-details/?id=1981>

Decision making about Crown Street Library

The provision of a library service is a statutory duty under Section 7(1) of the Public Libraries and Museum Act 1964. This requires local authorities to deliver a comprehensive and efficient public library service. The nature of the service provided is based on the assessment of local needs, equalities implications and the resources available to the Council.

In reviewing the library service, the provision of the library service as a whole is required to be considered. In making decisions, it was clearly relevant to take account of the existing way that services are provided. This included the existing buildings like the Crown Street Library (with the historical and beneficial background).

Key factors in the decision to relocate the central library service from Crown Street to the Dolphin Centre were, the need to achieve savings and reduce liabilities (a revenue

savings from co locating of around £300,000 per year and potential capital costs of maintaining the building), refreshing the library offering (which has been suffering declining usage both in terms of footfall and book loans from the traditional library), the benefits of relocating from a building which no longer meets contemporary needs to a modern purpose converted library (longer opening hours, IT, self-servicing, improved facilities, (including a large café and much better disabled facilities).

Public Opinion

The decision to relocate the library service and cease to operate a service from Crown Street Library is controversial. The Council's own survey (completed by 3% of residents) indicated that 91% disagreed or strongly disagreed with the relocation of the library to the Dolphin Centre. There are also local campaigners (the Friends of Darlington Libraries) who are passionate in their desire to keep Crown Street as public library and have been highly critical of the decision to relocate the service. The concerns include, the heritage implications of moving the service from a purpose built historic building which was gifted to the town by a local benefactor, the reduction in size and space and staff, the loss of the art gallery space in the Crown Street Library, the reduced local studies service and the concept of a co-located library in a leisure centre.

Alternative plans have been put forward for retaining Crown Street as a library with additional income generation suggestions. However when balanced against the potential savings of relocation and the financial liabilities of retaining Crown Street as a library, these have not been considered to be viable by the Council.

There is currently a strong possibility of legal challenge (judicial review) of the decisions made by the Council to relocate the library service from Crown Street.

It will also be the case that any proposed changes to the terms of the trust, the designation of trust property or for the sale of the building are likely to be opposed and potentially subject to challenge.

The sequence of decision making

The intention has been to complete the decision making about the library service, including decisions about whether the central library service should relocate to the Dolphin Centre. This has now been done.

As indicated, the provision of a library service is a statutory duty and it was considered that this decision needed to be taken by reviewing the service as a whole including the allocation of resources and the shape of any future service.

Only after that decision had been taken could the implications for the future of the Crown Street Library as a property held on trust and designated land be addressed.

Implications of the 'service provision' decision for the Trust

It is considered that following the decision about the discontinuance of the Library Service at the Crown Street Library that a cy pres occasion will occur.

As the intention is to relocate the central library service to the Dolphin Centre, the original purpose is to be provided adequately by other means [S. 62 (1) (e) (i) Charities Act 2011].

Alternatively as the Crown Street building is too costly to maintain (no endowment was ever provided to meet the costs of providing a library service at Crown Street or the building/maintenance costs) and the Council now has a different vision for the central library, the original purpose has ceased to provide a suitable and effective method of using the property [S. 62 (1) (e) (iii) Charities Act 2011].

Sole Trustee meeting

As yet no meeting of the Sole Trustee has been convened. Because of the planned relocation of the library service from the Crown Street Library a meeting of the Sole Trustee will need to be convened. Under the Councils decision making model (Leader and Cabinet) this is a role that will be discharged by members of Cabinet.

A meeting of the sole trustee is now being planned. The options for the future of the trust will need to be considered now that the Council has decided to cease the provision of a library service from the Crown Street Library. Any proposals will need to be consulted on before being formally submitted to you for your consideration of any variation to the terms of the trust or sale of the property.

Possible options

The terms of the bequest in the will of Edward Pease were widely drawn with the bequest being stated as

‘for the education of the poorer classes in the Borough of Darlington either by establishing or founding or assisting in the establishing or founding a free library or scholarship for elementary schools for boys or girls or in such other way as my said trustees shall in their uncontrollable discretion think fit’.

This would support the view that range of possible options would not sit out of place with the original aims of Edward Pease.

There are at this stage considered to be a number of options:

1. The building is sold on the open market for a non-charitable use, with the proceeds of sale then held on trust for a charitable purpose. The possible charitable purposes on any future endowment could be:
 - a. An educational trust to support the education of under privileged young people from Darlington.
 - b. A library endowment – to provide ‘over and above’ funding to support the library service
2. The building is leased or sold to an organisation whose intention is to use the building for public benefit or community purposes.

The Councils plans

As the decision about the relocation of the library service has been made we will be starting the process of dealing with the preparatory work required (the tendering for the building works at the Dolphin Centre, applying for planning permission and so on).

It is however recognised that there is the potential for legal challenge it is not planned to formalise any building contracts while judicial review proceedings are possible or active. If judicial review proceedings are commenced then no move will occur until the conclusion of those proceedings.

While we will be aiming to hold a trustee meeting May, it is recognised that this will only be the start of the process. The initial proposals for consultation will need to be agreed by the sole trustee and then after the conclusion of consultation and agreement by the sole trustee the formal application for a scheme will need to be submitted for your consideration.

As yet it is unclear how the development of a scheme/proposals might be impacted by any potential judicial review. Ideally this will still move forward, but we recognise that this may not be practicable if persons involved in the judicial review do not want to engage while a judicial review is underway.

From our perspective if it is not possible to progress the consultation about the possible alternative options for Crown Street building while a judicial review is unconcluded then a significant delay is likely to be occasioned.

We do however plan to move forward the relocation of the library service from the Crown Street Library at the conclusion of the judicial review, even if the alternative uses for the building and the future of the Trust is still to be concluded. The basis for this view is that statutory obligation to provide a library service rests with the Council and having made a decision (subject to any judicial review about that decision) the Council must be able to move that decision forward.

Your views

While it is appreciated that, at this early stage you may not want to give any definitive view, it would be helpful if you could give an indication about how you currently view the approach being taken by the Council. If you have any advice or observations at this stage then these would also be welcomed

With my regards

Yours sincerely



Luke Swinhoe
Assistant Director - Law and Governance

Tracy Blowers

From: PCT PB3 Correspondence (Queue) <Operations3@charitycommission.gsi.gov.uk>
Sent: 12 May 2017 09:18
To: Luke Swinhoe
Subject: RE: Crown Street Library, Darlington - 4057177 [DISPOSAL: Trustees update and current proposals/intentions] CRM:0392086

Dear Mr Swinhoe

Thank you for your email of 6 April 2017 in connection with the above charity and the trustees notification of the most recent decisions and intentions in relation to the proposed disposal of the Crown Street site, either through an open market sale or via lease for alternative educational/recreational purposes benefiting the community.

The trustees update is appreciated for both its thoroughness and clarity, the proposals outlined presenting no difficulties from the perspective of the Commission.

As you have identified, the only point of regulatory engagement on our part would be where a cy pres Scheme may be required to appropriately direct the proceeds of a sale or the income generated from a lease to other similar charitable purposes. The need for such a Scheme would be subject to the trustees final decision on the form of disposal, should this be a disposal to another charity with educational/recreational purposes compatible with those of the Library charity then the provisions of section 117(3)(c) of the Charities Act 2011 may apply - enabling a 'charity to charity' disposal on terms not necessarily reflecting market value, including at nil value.

If there were no proceeds of sale, or a peppercorn/nil value rent under any lease, then there would be nothing for the Commission to redirect via Scheme and our engagement could be limited to simply confirming this was the case. It would be for the trustee to determine/agree the specific terms of a disposal, which could at its discretion require any tenant to meet the premises annual upkeep/maintenance/insurance costs - alleviating the trustee of that burden while ensuring the asset remained adequately protected against any future circumstances that may make the trustees own use of the premises once again financially viable.

The advice already provided by the Commission continues to reflect our views on the matter, the above serving to supplement that advice - and so far as we are able highlight an area the trustee may wish to consider further.

I am able to advise in closing that the Commission has continued to receive a small number of related expressions of concern from the public, to which we have responded by confirming the trustees powers of disposal/decision-making and clarifying the limitation to any engagement on part being in relation to any redirection of associated proceeds/income.

Kenneth Rogers

W: <https://www.gov.uk/charity-commission>



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----- Original Message -----

From: Luke Swinhoe

Received:

To: PCT PB3 Correspondence (Queue)

Subject: RE: Crown Street Library, Darlington - 4057177 [DISPOSAL: Trustees update and current proposals/intentions]

[Dear Mr Hughes Jones,](#)

We have been in correspondence with the Charity Commission previously about this matter, and I am hoping that this email will find its way to you or your colleague Mrs Paula McNicholas (for your information the earlier correspondence is attached).

I am now writing to update you of the current position (please see the attached letter) to give you an opportunity to consider the view being taken by the Council and also in order to give you the opportunity to give any advice or observations that you might have for the Council at this stage.

I will be happy to provide any further information.

With my regards

Luke Swinhoe

Assistant Director, Law and Governance

Monitoring Officer

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