

Victoria Dixon

Subject: FW: Darlington Library, Crown Street - 8036174 CRM:0331307
Importance: High

From: FC Do Not Reply (Queue) [<mailto:donotreply@charitycommission.gsi.gov.uk>]
Sent: 21 July 2016 10:07
To: Stephen Allison
Subject: Darlington Library, Crown Street - 8036174 CRM:0331307
Importance: High

Dear Mr Allinson

Thank you for your emails. Please accept my apologies for the delay in replying.

We have considered the information provided and we can confirm it would appear a charity was created here. The property in question was given 'on trust' for a public library which is a charitable purpose.

The land is designated land so unless there is a power of sale in the original deed, a disposal will represent a change of objects of the charity (from providing land for charitable use, to providing funds for charitable use). In the absence of a power of sale and a power to apply the proceeds in the original deed, any proceeds of disposal of designated land represent permanent endowment. If the original deed cannot be located the trustees should presume a lack of power to dispose and to expend the proceeds, so a Commission scheme will be required to authorise the sale of the land and distribution of the proceeds of sale.

The charity trustee will need to demonstrate a cy pres occasion and demonstrate what steps they have taken to consult on the closure of the charity. Also, the trustee will need to identify a cy pres use for the proceeds and, if applicable, the basis on which they believe it would be appropriate to release the permanent endowment.

If the Commission grants authority to dispose of the land the trustee will have to comply with the requirements of section 117-121 of the Charities Act 2011.

Guidance can be found on our website at:

<https://www.gov.uk/guidance/change-a-charity-governing-document-by-scheme>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396345/cc28.pdf

We hope this information is of assistance to you.

Yours sincerely

Mrs Paula McNicholas

Charity Commission – Permissions and Compliance Team

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

From: Stephen Allinson
Received:
To: FC Email Team (Queue)
Cc: Luke.Swinhoe@darlington.gov.uk

Subject: * chaser* Urgency expressed RE: Darlington Library, Crown Street [Trusts and Disposals Advice]
CRM:0392328

This email was classified as : OFFICIAL

Dear Sirs,

I refer to my emails of 24 June and 5 July 2016 and should be obliged if you would respond as soon as possible as this matter is now of some urgency.

Thank you in anticipation of your response.

Kind regards

Stephen Allison
Lawyer (Property)
Legal Services, Darlington Borough Council
Town Hall, Darlington DL1 5QT
01325 405493
Internal ext 5493 - External extension 405493
<<mailto:stephen.allison@darlington.gov.uk>>
www.darlington.gov.uk <<http://www.darlington.gov.uk/>>

From: Stephen Allison
Sent: 05 July 2016 10:02
To: 'FC Email Team (Queue)'
Subject: RE: Darlington Library, Crown Street [Trusts and Disposals Advice] CRM:0392328

This email was classified as : OFFICIAL

Dear Sirs,

Further to the above matter and my email of 24 June 2016. Please see below further information from the National Archives advising that library was never registered at either the Chancery Close Rolls or in the books of the Charity Commission.

I look forward to your advises in due course.

Kind regards

-----Original Message-----
From: foienquiry [<mailto:foienquiry@nationalarchives.gsi.gov.uk>]
Sent: 24 June 2016 16:26
To: Victoria Dixon
Subject: Call Update Report, Call Reference F0045984

Dear Ms Dixon,

Thank you for your search order of 9 June regarding a search for the trust deed enrolment in Chancery Close Rolls or in books of Charity Commission for a library in Darlington late 1885 or 1886.

I began by searching the following documents from record series CHAR 12 (Charity Commission: Enrolments under Various Acts, Series 1: 1856-1925):

CHAR 12/2	Enrolments: 1875 May 1-1883 Jun 30
CHAR 12/3	Enrolments: 1883 July 1-1890 Mar 11

These are alphabetical indexes of enrolments. I searched for any reference to a library in Darlington but was unable to find any.

I also searched a document from record series CHAR 13 (Charity Commission: Enrolments under Various Acts 1926-1963):

CHAR 13/485 Index: CHI-EDA

This was another index in which I hoped to find a reference to a library in Darlington but again I was unsuccessful.

I then searched various indexes and card indexes available in the reading rooms of The National Archives. In record series C 275 (Chancery: Rolls Chapel Office, Enrolment Office and predecessors: Original Calendars and Indexes to the Close Rolls: 1547-1902) I found a reference to a trust deed involving Sir Joseph Pease in the 1886 edition, there were none in the 1885 edition.

Accordingly I searched the appropriate close roll in record series C 54 (Chancery and Supreme Court of Judicature: Close Rolls: 1204-1903):

C 54/19058 Part no: 31: 1886

I found the trust deed involving Sir Joseph Pease but I regret to say that we were unable to find any reference to a library in Darlington.

We would like to thank you for using The National Archive's search service and hope that you have found it to your satisfaction. We are always keen to receive feedback about our services since this may help us improve them. If you have any comments regarding the service please send them to: Remote Enquiries Manager, Advice and Records Knowledge, The National Archives, Kew, Surrey, TW9 4DU.

If you are dissatisfied with any aspect of our response to your request for information please send full details to:

The Quality Manager
Public Services Development Unit
The National Archives
Kew
Richmond
Surrey
TW9 4DU

You may request an independent internal review by our Chief Executive's Office as a first step if you are unhappy with the standard of service you have received.

You have the right to ask the Information Commissioner (ICO) to investigate any aspect of your complaint. Please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning his investigation.

Yours sincerely,

Gavin Walsh
Freedom of Information Records Search Team The National Archives

If you would like to contact us again regarding this request, please contact the helpdesk:

via e-mail: By replying to this e-mail
or (020 8876 3444)

Remember to quote your call reference number: F0045984 in any correspondence, as this will assist us in providing you with a quick response.

www.nationalarchives.gov.uk

Please don't print this e-mail unless you really need to.

Stephen Allison
Lawyer (Property)
Legal Services, Darlington Borough Council
Town Hall, Darlington DL1 5QT
01325 405493
Internal ext 5493 - External extension 405493
<<mailto:stephen.allison@darlington.gov.uk>>
www.darlington.gov.uk <<http://www.darlington.gov.uk/>>

From: Stephen Allison
Sent: 24 June 2016 12:56
To: 'FC Email Team (Queue)'
Subject: RE: Darlington Library, Crown Street [Trusts and Disposals Advice] CRM:0392328
Importance: High

This email was classified as : OFFICIAL

Dear Sirs,

Darlington Library

Your Ref DB 8036174 / 425242 CC-FC

I refer to our previous email correspondence in this regard.

There has been an issue over whether there was a covenant that required part of the Library to be 'used for the purpose of a public library forever'. This was because of the 1983 statutory declaration of the former Assistant Borough Solicitor (attached).

There is also the issue about whether the land was gifted to the Council subject to a trust rather than a covenant.

Despite searches at the land registry no covenant has been identified. It is possible that the land may have been conveyed on trust.

We have been searching at the County Durham Archive, with the Charities Commission and have an outstanding query with 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.

Most recently we have obtained a copy of an entry in a Report and Digest made to the Charities Commissions (1900-1904)

Ref No: Library G 189 Temp No: 190 Acc No:

Parliamentary Papers

Returns comprising Reports and Digests made to the Charity Commissioners, Inquiry into Charitable Endowments in every parish in County Durham arranged by parish: Volume 1, A - G

H.M.S.O., 1900-1904

See the attached scan of an entry on page 404 (page 66 of the Darlington Charities report) relating to the Public Library.

Under the heading of 'Public Library' of a grant of land and buildings made in 1885 to the Darlington Corporation to hold of fee simple upon trust for the purposes of a public library. A copy of this is attached

The Report and Digest does however provide some evidence of the land being held on trust for a library (in addition to the Statutory Declaration of the former Assistant Borough Solicitor). It may be the case that covenant issue (mentioned in the 1983 statutory declaration) was a misdescription and that what the Assistant Borough Solicitor had meant to say was that the land was conveyed on trust for it to be used as a library. He was after all completing the statutory declaration from memory, the original papers had been lost.

We are aware that because of the Mortmain and Charitable Uses Act 1888 any land subject to a trust should have been enrolled on the Chancery 'Close Rolls' within 6 months. There is no record at the Charities Commission about this. We are awaiting details to come back from searches of the historic 'Close Rolls' which are held at the National Archive in Kew.

Does the attached go any further in establishing that there is a charitable trust in relation to the land and which would require Charity Commission approval if we were to dispose?

Kind regards

Stephen Allison
Lawyer (Property)
Legal Services, Darlington Borough Council
Town Hall, Darlington DL1 5QT
01325 405493
Internal ext 5493 - External extension 405493
<mailto:stephen.allison@darlington.gov.uk>
www.darlington.gov.uk <<http://www.darlington.gov.uk/>>

From: FC Email Team (Queue) [<mailto:fcemailteam@charitycommission.gsi.gov.uk>]
Sent: 09 November 2015 16:56
To: Stephen Allison
Subject: RE: Darlington Library, Crown Street [Trusts and Disposals Advice] CRM:0392328
Importance: High

Darlington Library
Our Ref DB 8036174 / 425242 CC-FC
Dear Mr Allison

Thank you for your further e-mail regarding the Commission declaring charitable trusts. It may be helpful if I clarify that we can only do so where charitable activity is taking place by custom and usage but the trusts have never been set down in writing.

In this case there has been documents referring to the trusts upon which the land was held or gifted, but what evidence there is, is not sufficient for the Commission to believe these are charitable.

The council to satisfy itself that as far as it is able it can firmly established that in the absence of any evidence to the contrary there are no charitable trusts over the endowments and how then to proceed. If it can do so then the property may be treated as part of the council's corporate property subject to its requirements and restrictions on disposal.

I hope that this is helpful.

Yours sincerely

David Bishop
Charity Commission - First Contact

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

From: Stephen Allison
Received:
To: FC Email Team (Queue)
Subject: RE: Darlington Library, Crown Street [Trusts and Disposals Advice] CRM:0392328

Dear Ken,

Many thanks for your reply.

In circumstances where it cannot be determined categorically that a charitable trust is in operation are the Charity Commissioners able to make a Scheme or Order as if there were such because if not and the Council did dispose of the land and such trust was at some stage in the future determined by further evidence coming to light then it would leave itself open to a claim.

Regards

Stephen Allison
Lawyer (Property)
Legal Services, Darlington Borough Council
Town Hall, Darlington DL1 5QT
01325 405493
Internal ext 5493 - External extension 405493
[<mailto:stephen.allison@darlington.gov.uk>](mailto:stephen.allison@darlington.gov.uk)
www.darlington.gov.uk [<http://www.darlington.gov.uk/>](http://www.darlington.gov.uk/)

From: FC Email Team (Queue) [<mailto:fcemailteam@charitycommission.gsi.gov.uk>]
Sent: 16 October 2015 14:20
To: Stephen Allison
Subject: RE: Darlington Library, Crown Street [Trusts and Disposals Advice] CRM:0392328
Importance: High

Dear Mr Allinson

Thank you for your emails of 7 and 16 October 2015, in connection with Darlington Library and a request for the Commission's advice on whether that part of the site marked in red on the supplied plan would be considered to be held on charitable trusts affecting the proposed disposal of the entire site.

Having considered the information provided, which is limited to:

- (i) The two Statutory Declarations citing the red land as having been acquired through a now lost Deed of Gift dated 23 October 1885 from Sir Joseph W Pease and Another.
- (ii) The two Statutory Declarations stating the red land was 'to be used for purposes of a public library forever'.

It simply is not possible for us to determine from the above if charitable trusts had been established over the red land.

A Deed of Gift to a Local Authority need not involve charitable trusts and 'the purpose of a public library forever' (as a Corporate Civic Amenity) need not necessarily mean an endowed charitable foundation. There is insufficient information for us to make a determination here, all we can suggest is for you to try contacting Henry Pease & Co Ltd (Company Number 00077463) - which although dormant is still listed at Companies House and which may still retain records relating to the land in question, or be in a position to provide a point of contact with the Pease family who may still retain papers relating to the 1885 Gift.

I hope this limited advice will be of some assistance to the Council.

Ken Rogers

FC Casework Team - Charity Commission for England and Wales

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

From: Stephen Allinson

Received:

To: Operations - Liverpool (Queue)

Cc: Luke.Swinhoe@darlington.gov.uk

Subject: RE: Darlington Library, Crown Street [Trusts and Disposals Advice]

Dear Sirs

The Council is the freehold owner of land as detailed in the attached Office Copies part of the land is on the evidence of the attached statutory declarations is held for purpose of use as a public library forever and as such I believe a charitable trust may have arisen.

The Council is looking into the possibility of disposing of the whole of the land in its title in the near future.

I should be obliged if you would advise if you consider that a charitable trust has arisen In respect of that part of the land covered by the trust (the land coloured red on the first plan within the statutory declarations).

If you do believe a trust has arisen then I understand that as there is no trust deed that contains a power of sale and the Council intends to dispose of the whole of the trust land that we cannot rely on the statutory power of disposal as set out in the Trusts of Land and Appointment of Trustees Act 1996 (TLAT) and it will therefore be necessary for you to make a Scheme or Order on the Council's application.

Please can you confirm that this would be the case and can you advise approximately how long it would take to process such a Scheme or Order.

I understand that any application to yourselves would need to include:

- the reasons why we think we need an order
- the value of the land (independent valuation)
- how we have advertised the disposal
- our decision making processes
- whether we intend to replace the trust land

I look forward to hearing from you as soon as possible.

Yours faithfully

Stephen Allison
Lawyer (Property)
Legal Services, Darlington Borough Council
Town Hall, Darlington DL1 5QT
01325 405493
Internal ext 5493 - External extension 405493
<<mailto:stephen.allison@darlington.gov.uk>>
www.darlington.gov.uk <<http://www.darlington.gov.uk/>>

DISCLAIMER

1. Any opinions or statements expressed in this e mail are those of the individual and not necessarily those of Darlington Borough Council.
2. This e mail and any files transmitted with it are confidential and solely for the use of the intended recipient. If you receive this in error, please do not disclose any information to anyone and notify the sender at the above address.
3. Darlington Borough Council's computer systems and communications may be monitored to ensure effective operation of the system and for other lawful purposes.
4. Although we have endeavoured to ensure that this e mail and any attachments are free from any virus we would advise you to take any necessary steps to ensure that they are actually virus free.

This email was scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisations IT Helpdesk.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

----- This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the original message from your system.
The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

DISCLAIMER

1. Any opinions or statements expressed in this e mail are those of the individual and not necessarily those of Darlington Borough Council.
2. This e mail and any files transmitted with it are confidential and solely for the use of the intended recipient. If you receive this in error, please do not disclose any information to anyone and notify the sender at the above address.
3. Darlington Borough Council's computer systems and communications may be monitored to ensure effective operation of the system and for other lawful purposes.