

CEREDIGION COUNTY COUNCIL

Report to: Charity Trustee Committee
Date of meeting: 26th September 2022
Title: New Quay Library and Reading Room
Purpose of the report: To review the trust and decide on next steps
For: Decision

1. BACKGROUND

- 1.1 In 1952 an area of land at Uplands Square, New Quay was conveyed and placed into trust with the trustees of the New Quay Library and Reading Room to erect a library and reading room on the site and to use it for that purpose for the benefit of the inhabitants of New Quay.
- 1.2 In 1956 the trustees of the New Quay Library and Reading Room conveyed the property to Cardiganshire County Council.
- 1.3 In 1958 Cardiganshire County Council executed a Deed of Trust placing the property and the proceeds of any sale thereof and any rents and profits into a trust ("the trust") on the same terms and for the same purposes as was set out in the original 1952 Conveyance and Trust Deed.
- 1.4 In 1959 Cardiganshire County Council, as trustee, sold an area of land to the south-east of the site (with the consent of the Ministry of Education) for £70. This now forms part of the Costcutters site.
- 1.5 Library services have been run from the site for the benefit of the inhabitants of New Quay for many years but in 2014 New Quay Town Council entered into a service level agreement with the Council in order for them to manage the library provision utilising volunteers. This agreement was renewed in 2016 however the arrangement ended on 1st November 2021 and the property was vacated.

2. CURRENT POSITION

- 2.1 The trust currently holds the area of land and buildings shown edged red on the attached Appendix 1 and also cash held on account of £1,015.84p being the proceeds of sale from the 1959 land sale plus interest. As indicated in Section 1 above, these trust assets are held by the Council as trustee for the charitable object of using the site for a library and reading room for the benefit of the inhabitants of the village of New Quay.
- 2.2 No rates are payable on the vacant building as the rateable value is below £2,600. Electricity is being billed at the property which the Council corporately is paying as part of its group account however Maintenance intend to visit the property shortly for an inspection and will hopefully then instruct for the electricity to be disconnected to save costs. The electricity cost between 1st November

2021 until the property is disconnected will then be recovered from the trust account as it is a trust liability not a corporate liability.

2.3 New Quay Community Library (“NQCL”), run by volunteers, is now located in New Quay Memorial Hall. NQCL have confirmed that they have no plans to move back to the Trust site as there is no disabled access, no running water, no toilet facilities and there are issues with the condition of the floor. They have also confirmed that New Quay Town Council contribute £360 towards their electricity costs at the Hall and that Ceredigion County Council Library Services provides internet services, IT equipment and all books.

2.4 As the trust site is now vacant and officers have received confirmation from the Library Service and NQCL that there are no plans to use the site as a library or reading room in the future, there is a need to consider the position of the trust and its future as the trust site is not currently being used for the purposes of the trust nor being of benefit to the beneficiaries of the trust. In such circumstances the trustee should look at whether the doctrine of cy-près is applicable so that the trust can be diverted to another charitable purpose.

3. CY-PRÈS

3.1 The doctrine of cy-près is a doctrine which enables charitable gifts, which would otherwise fail, to be diverted to another related charitable purpose. Section 62 of the Charities Act 2011 (“the Act”) sets out the circumstances where a charitable gift can be altered by the Charity Commission so that it can be applied cy-près.

3.2 The circumstances set out under s.62(1) of the Act are:

- (a) *where the original purposes, in whole or in part—*
 - (i) *have been as far as may be fulfilled, or*
 - (ii) *cannot be carried out, or not according to the directions given and to the spirit of the gift.*
- (b) *where the original purposes provide a use for part only of the property available by virtue of the gift.*
- (c) *where—*
 - (i) *the property available by virtue of the gift, and*
 - (ii) *other property applicable for similar purposes,*

can be more effectively used in conjunction, and to that end can suitably, regard being had to the appropriate considerations, be made applicable to common purposes,

- (d) *where the original purposes were laid down by reference to—*
- (i) *an area which then was but has since ceased to be a unit for some other purpose, or*
 - (ii) *a class of persons or an area which has for any reason since ceased to be suitable, regard being had to the appropriate considerations, or to be practical in administering the gift, or*
- (e) *where the original purposes, in whole or in part, have, since they were laid down—*
- (i) *been adequately provided for by other means,*
 - (ii) *ceased, as being useless or harmful to the community or for other reasons, to be in law charitable, or*
 - (iii) *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.

3.3 It is proposed that s.62(1)(e)(i) could be applicable here as the provision of a library has been adequately provided for within the Memorial Hall, by NQCL with the support of New Quay Town Council and the County Council in its corporate capacity through its Library Services.

3.4 Where a cy-près occasion has been deemed to arise it is the duty of the trustee under s.61 of the Act to secure the effective use of the trust's property for charity by taking steps to enable it to be applied cy-près.

4. NEW PURPOSES

4.1 If the trustee agrees that a cy-près occasion has arisen, then it can apply to the Charity Commission to make a new scheme to provide new purposes of a similar nature for the trust. When deciding on new purposes, the Commission must consider:

- The spirit of the original gift;
- The desirability of providing new purposes that are close to the original; and
- The necessity for the new purposes to be suitable and effective in light of current social and economic circumstances.

4.2 The trustee must consider what similar purpose(s) the charity should have and what use the charity's assets (the land and money held) might then be put towards in light of the three considerations above. By way of example, the trustee had a similar cy-près occasion arise in the former Tregaron Secondary School. Following lengthy consultation with the community, the trust land was sold under a cy-près scheme and new charitable purposes set out for the sale proceeds so that it can be put towards the advancement of education for pre-school and school-age children in Tregaron.

4.3 Charitable purposes are listed under s.3 of the Act and Legal Services would advise that the provision of a site for a library would fall under s.3(b) being the advancement of education. As such Legal Services would suggest that the trust consider proposing to the Commission a much wider new purpose along the lines of 'the advancement of education of the inhabitants of New Quay'.

5. CONSULTATION

5.1 Once the trust has initially considered the above, the Commission expects the trustee to carry out appropriate consultation to help inform its final decision making regarding whether any of the criteria for making the scheme have been met and, if so, what new purposes the charity should have.

5.2 It is for the trustee to decide what form the consultation should take, however where the proposed changes are significant, the Commission expects consultation to be vigorous, including some (or all) of the following:

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

5.3 Legal Services would suggest that the trust consult the inhabitants of New Quay on two points:

a) the proposed new purpose of the trust ie: whether the inhabitants of New Quay agree with the proposed new purpose or, if not, what new purpose do they instead propose; and

b) what use could the trust property be put to under the above purpose(s) in light of the three points which must be considered by the Commission as per paragraph 4.1 of this report.

5.4 As the online consultation with the relocation of the Tregaron War Memorials (undertaken earlier this year) was very successful and had a good engagement response, Legal Services would suggest that the same method be used here. The online consultation could be hosted on the Council website and can be

advertised through Press Office posting on Council social media and any other relevant local social media pages. Targeted consultation can also be undertaken with the Local Member and organisations such as New Quay Town Council, Memorial Hall, NQCL and any other organisations/groups considered appropriate by Committee.

- 5.5 For those members of the public who do not utilise online resources a hardcopy consultation poster could be produced to advertise the consultation and officers could make enquiries with NQCL as to whether they would be prepared to flag the consultation to their users and, if the users want to respond in writing rather than online, then a paper copy can be given to them to be returned to Council officers on behalf of the trust by the date for closure of the consultation. This will increase engagement and ensure that library users are being fully involved in the process.
- 5.6 There is no set length that the consultation must run for but it is advisable to consult for at least 6 weeks in order to ensure that everyone has adequate time for response.
- 5.7 When applying for a scheme, the trustee will have to provide details of consultation and a summary of responses received together with information as to how this has helped inform the trustee's decision making.
- 5.8 If the Commission are satisfied that the criteria for making a scheme have been met they will consider drafting a scheme. The Commission may require public notice be made of its intention to make a scheme and they will inform the trustee of this if they consider it appropriate.
- 5.9 As per the Commission's guidance on public benefit (PB2 Public Benefit: running a charity) the trustee must be conscious when making decisions that impact on the way in which people benefit from the charity's purpose or who can benefit from it, that they are making decisions:
- that ensure the charity's purpose provides benefit;
 - that manage risks of detriment or harm to the charity's beneficiaries or to the public in general from carrying out the charity's purpose;
 - about who benefits in ways that are consistent with the charity's purpose; and
 - that make sure any personal benefits are no more than incidental.

Legal Services believes that the above are being complied with in relation to the recommendations proposed in this report.

- Recommendation(s):**
- 1. To resolve that a cy-pres occasion has arisen under s.62(1)(e)(i) of the Charities Act 2011;**
 - 2. To propose, subject to consultation, that the new purpose of the trust to be proposed to the Charity**

Commission be ‘the advancement of education of the inhabitants of New Quay’;

- 3. To resolve that officers, on behalf of the trust, undertake a consultation exercise as set out in paragraphs 5.4-5.6 of this report together with any additions as agreed in Committee. The results of the consultation shall to be brought back for consideration by Committee once complete.**

Reasons for decision: To comply with the duties on the trustee under the Charities Act 2011 and further the purposes of the trust.

Appendices: Appendix 1 – Trust Land plan

Head of Service: Ein Prysor – CLO Legal & Governance Services

Reporting Officer: Louise Harries – Solicitor

Date: 8th September 2022

Appendix 1 – Trust Land

Land Registry
Official copy of
title plan

Title number CYM601820
Ordnance Survey map reference SN3859NE
Scale 1:1250 enlarged from 1:2500
Administrative area Ceredigion / Ceredigion



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