

AGENDA ITEM

REPORT TO CABINET

9 FEBRUARY 2012

**REPORT OF CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

Arts, Leisure & Culture – Lead Cabinet Member – Cllr Ken Dixon

SPENCE BEQUEST TRANSFER

1. Summary

The Spence Bequest is an unincorporated charity of which Stockton Borough Council is the corporate trustee. The Spence Bequest holds a sum of money which is to be used, alongside Heritage Lottery Funds, for the construction of the Spence Building, a new museum store at Preston Hall. The principal of using the Spence fund for this purpose was agreed by Cabinet at its meeting on 5th February 2009. This report seeks to follow a legal process to bring about that use of the residual funds.

There is no effect upon the items in the Spence collection which form an integral part of the museum's resources. A further paper will be presented to Cabinet in March detailing progress on the project and plans for the reopening of the facility in the early summer.

2. Recommendations

Cabinet recommend to Council, as corporate trustee to the Spence Bequest, to agree three recommendations:

1. Introduce new procedures by way of statutory power (pursuant to s.74D of the Charities Act 1993) that regulate how the charity is administered, to take immediate effect. Proposed procedures are appended to this report.
2. Appoint three ex-officio trustees, including Lead Cabinet Member, Arts, Leisure and Culture, with immediate effect.
3. Terminate the trusteeship of the corporate trustee, with immediate effect, on the understanding that the newly appointed trustees may subsequently (subject to Charity Commission consent) amend the charitable purposes and bring about the release of capital from the Spence Bequest.

3. Reasons for the Recommendations/Decision(s)

To subsequently allow changes to the Charitable Objects of the Spence Bequest in order to release funds to part fund the capital costs of the Spence Building at Preston Hall Museum.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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RECOMMENDATIONS

Cabinet recommend to Council, as corporate trustee to the Spence Bequest, to agree three recommendations:

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DETAIL

Introduction

1. Preston Hall and Park is currently being refurbished and improved to form the centrepiece of Stockton Borough Council's Heritage Strategy. The project includes a rationalisation and re-housing of its collection, a complete refurbishment of the main museum building and Victorian Street as well as a related project to restore the Victorian Kitchen Garden and Orchard. Work is continuing and the Museum is projected to reopen in Summer 2012. A full report on the progress will be brought to Cabinet for its March meeting.
2. The Spence Bequest forms a major part of the Museum's collection but due to its size and nature, in addition to a number of access restrictions which the former museum layout dictated, many items have not always been on public display and require specialist storage. The Spence Building provides this facility both for items from the Bequest as well as from the wider collections.

The Spence Bequest

3. The Spence Bequest is an unincorporated charity founded by the will of G O Spence. SBC is the sole (corporate) trustee. The Governing Document is HIGH COURT (CHANCERY DIVISION) SCHEME DATED 18TH JULY 1966 and the charitable purposes are twofold: (1) public display of a collection of arms, antiques and articles de vertu contained in the will of G O Spence and presented to the corporation of Stockton on Tees ("Spence Collection"), and (2) application of the residuary estate in the purchase of land at Stockton on Tees in or towards the erection thereon of a public hall to be used by the local authority for such purposes as it may, from time to time, consider desirable ("Spence Fund"). A copy of the Governing Document is attached for your information.
4. As part of the successful £6.6million Hall bid (53% Heritage Lottery Funded), a specific collections store building (known as the Spence Building) was created, housing the majority of the Museum collections for Stockton Borough Council.
5. The cost of constructing the new build store totalled £600k and it was intended that the Spence Fund would contribute £240k towards the construction cost. The release of such funds is contrary to the second of the currently stated charitable purposes but would have no effect on the continued public display of the Spence Collection which is central to the exhibitions and reserves at Preston Hall.
6. A legal process must be followed to bring about the use of the residuary fund. The Charity Commission, regulator for charities in England and Wales, has assisted in the direction of this legal process. The recommendations suggest the passing of three resolutions by full Council (in its role as corporate trustee) and each is discussed in turn below.
7. The first resolution shall introduce new procedures, with immediate effect, to the governing document using a statutory power (section 74D of the Charities Act 1993 (as amended), this is necessary because in its current form the governing document, dated 1966, makes no provision for how trustees can be appointed, how a trusteeship may be terminated, how trustees may call a meeting or take on or grant a lease (amongst other things). It is suggested that the new procedures are substantially based upon those contained within a Model Trust Deed published by the Charity Commission and a draft setting out those new procedures is appended which shall be read, after the passing of the first resolution, in conjunction with the current governing document (which predominantly details the charities objects).
8. The second resolution shall appoint new trustees in accordance with the new procedures introduced to the governing document by the first resolution.

9. The third resolution, again in accordance with the new administrative procedures would terminate the trusteeship of full Council as corporate trustee leaving those newly appointed trustees to manage the affairs of the charity.
10. Following implementation of the three resolutions the newly appointed trustees can call/attend a meeting to consider the amendment of the charitable purposes using a statutory power: section 74C of the Charities Act 1993 (as amended). The trustees would have to satisfy themselves that the existing purposes no longer provide the most suitable and effective way to apply the charity's resources prior to deciding upon a modified form of words (e.g. "*application of the Spence Fund towards the building of a purpose built store at Preston Park Museum that shall be known as "The Spence Store" and shall house (amongst other things) that part of the Spence Collection that is not on public display, from time to time, at said museum*"). Upon passing the resolution a copy of the same would need to be filed with the Charity Commission, together with a statement of the reasons for passing it. The Charity Commission will check that all the requirements for passing such a resolution are met and are allowed 60 days to do this from the date they receive the resolution. During this period the Commission may direct the trustees to provide further information or give public notice of the resolution which will stop the 60 day clock until such matters are resolved. A resolution to amend charitable purposes will take effect at the end of the 60 day period. The Charity Commission has offered to review the proposed new objects (prior to the passing of the necessary resolution) to minimise delay.
11. Upon the coming into force of the resolution to amend charitable purposes the residuary funds can be released. The Charity Commission advises that it would be appropriate and in the best interests of the charity for the Council to grant a long leasehold interest of The Spence Building to the charity upon the release of funds because such action would provide a degree of control over the land to ensure continued use as a collections building. Consent is required from the Heritage Lottery Fund before the Council can effectively dispose of an asset subject to grant funding although preliminary enquiries with the HLF indicate that such consent is forthcoming. Once consent is obtained the Council may grant a lease to The Spence Bequest using delegated power 153, page 131 of the Constitution provided that the lease set out that the tenant (The Spence Bequest) is to sublet the premises back to the Council at a peppercorn rent. The Spence Bequest trustees (newly appointed individuals) could then call a meeting to enter into the lease and grant a sublease to the Council which could, in turn, accept the sublease using delegated power 47, page 107 of the Constitution. The Charity Commission also state that entering into a lease agreement is not the only way in which the trustees can fulfil their duty to protect the charity's assets, other options will be explored should any difficulties arise with respect to HLF consent.

FINANCIAL IMPLICATIONS

12. The release of the Spence Bequest fund will part fund the capital costs of the Spence Building, which has been integral to the wider Preston Hall and Park project.

LEGAL IMPLICATIONS

13. The first recommended resolution must be recorded as being pursuant to a statutory power – section 74D of the Charities Act 1993 (as amended). Consideration must be paid to those procedures which are to be introduced to regulate administration of the charity and consent must be obtained from the Charity Commission.
14. The second recommended resolution will appoint new trustees who need to be advised of their responsibilities and duties (a wealth of information is published online by the Charity Commission). Such newly appointed trustees should also obtain appropriate insurance against personal liability.

15. The third recommended resolution will discharge full Council of liability (save for any liability stemming from the Council's action as trustee prior to the passing of the third resolution).
16. Any subsequent amendment to the charitable purposes (by a resolution of the newly appointed trustees) must be recorded as being pursuant to a statutory power – section 74C of the Charities Act 1993 (as amended). Notification of such amendment will need to be provided to the Charity Commission (see paragraph 11).
17. Consent will be required from the Heritage Lottery Fund prior to granting a leasehold interest of the Spence Building to the charity to ensure there is no breach of grant conditions.
18. The drafting, approval, completion and registration of the lease from Council to charity and subsequent sublease from Charity to Council will require both parties to be represented by different a person to ensure there is no conflict of interest.

RISK ASSESSMENT

19. HLF consent may not be forthcoming with respect to consent to grant a lease of the Spence Building to the charity. If this is the case alternative options will need to be considered with respect to how charity trustees may amend charitable purposes and release funding whilst simultaneously fulfilling their overriding duties to the charity.
20. The resolution to amend the charitable purpose may not come into force until (at the earliest) the passing of 60 days from the date of receipt of the resolution by the Charity Commission. It is positive to note that the Commission, during initial discussion, is broadly supportive of the proposal to amend charitable purposes and it should be noted that, at present, there is little prospect of the Spence Fund being utilised in accordance with its current purposes – this will be appreciated by the Commission. In any case, the situation will be kept under strict review following the receipt by the Charity Commission of the resolution to amend the charitable purpose.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

21. Contributes to the following Sustainable Community Strategy themes:

Economic Regeneration and Transport
Culture and Leisure
Our Organisational effectiveness

EQUALITIES IMPACT ASSESSMENT

22. In discussion with the Diversity team, an EIA is not required for this report as the changes requested will have no impact on any of the strands of diversity.

CORPORATE PARENTING

24. Not Applicable.

CONSULTATION INCLUDING WARD/COUNCILLORS

25. The release of the capital element of the Spence Bequest was an integral part of the Heritage Lottery Bid process and consultation took place at the time with the Park Management Group, Friends groups, key stakeholders and with Cabinet.

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Background Papers

Governing Document dated 18th July 1966
Model Trust Deed (June 2011 edition) - Charity Commission publication

Ward(s) and Ward Councillors

None

Property

None