

EXTRAORDINARY TOWN COUNCIL MEETING 22 AUGUST 2018

BUCKFASTLEIGH TOWN HALL AND INSTITUTE (BTH&I) PROPSAL TO SET UP NEW CHARITY TRUSTEES

Background

Buckfastleigh Town Hall and Institute BTH&I is a charity set up in 1887 for the creation of a building to act as a “Town Hall, Library, Institute, Free School” or other such agreed purposes for the residents of Buckfastleigh. (See attached TH&I Governance Doc for full details).

The original trustees were a group of prominent local land owners who ran the charity until 1954 when Buckfastleigh Urban Council took over as charity trustees. The charity was passed to the council because the hall was in a poor state of repair and its income was insufficient to meet its annual running costs. The Urban District Council acted as charity trustees until 1974 when the urban district council was abolished and Buckfastleigh Town Council came into existence. The land and building was also vested in the town council to be held in trust for the Charity at this time.

The Town Council is now the corporate trustee of the charity and responsible for ensuring the charity is managed in accordance within Charity Commission and Local Authority rules and regulations.

Issues

1. Structure and Infrastructure

The Town Hall is currently in a poor state of repair and decoration with some significant improvements needed to meet minimum Health and Safety Standards. This includes urgent improvements to comply with fire safety regulations and address accessibility and security of the asset and our staff. We have issues with staff accommodation, storage, accessibility, security, heating, lighting, sound proofing and numerous small repairs. The state of decoration is poor and its furniture is unattractive and inflexible. There are also large areas such as corridors and old toilets which are difficult to use and kitchen areas which are not ideally equipped for use.

2. Governance and Management

The Town Council is the corporate trustee of the charity and acts as both Trustee and Management Committee. Until 2015, the Town Council were managing the operation of the charity and whilst there were separate accounts and trustee meetings, the overall operation of the charity was such that the Town Council and the BTH&I were seen as one and the same for tax purposes by HMRC. (See 3.

below for details of VAT implications). In 2015/16 governance arrangements were put in place which more clearly separated the two organisations and made it more compliant with the relevant legislation. This included setting up a separate bank account and employing an administrator for the charity.

The role of Trustee comes by default with the role of Town Councillor. Individuals standing for election are often unaware of the dual responsibility and may not have the necessary skills set to act as a charity trustee. The BTH&I hold monthly trustee meetings during working hours which Councillors attend when they can. Not all are able because of other work commitments and sporadic attendance makes it difficult to get the consistency required to have a full and proper picture of the complex issues being discussed. There can be confusion and conflict of interest between the roles as Councillor, Trustee and Town Hall user and the meeting is much more a management committee meeting than a meeting of trustees. Immediate operational decisions dominate discussion and there is little opportunity for more strategic charity trustee matters.

The charity does not have access to the trained facilities management support it requires to run a public building in a safe a proper manner. We have been working to improve some of our internal procedures but we still have some significant gaps. For example, we have only recently found out about legislation relating to scaffolding towers, etc. Corporate governance structures give individual trustees legal protection but only when they are operating within the law. A failure to comply with H&S and other regulatory matters exposes the trustees to individual legal actions for negligence, or worse. It is essential that the TH&I Trustees are able to operate within all the relevant legal frameworks to ensure the safety of users, to protect the charity's assets and to protect themselves.

The Chair of the Town Council is, by default, the Chair of the charity, but the charity has not appointed a Secretary or Treasurer. The Town Council has become much more active in recent years and individual Councillors already have significant other demands on their time in running a range of Council business, other community activity as well as often working full time.

3. Finance

The charity does not generate enough income to meet its annual running costs, does not hold reserves to pay for capital repairs and maintenance and does not have the funding it needs to access the specialist advice it requires. It relies on the Town Council income from rent and an annual grant to pay for day to day running and to meet any identified capital projects. This lack of income has contributed to the current state of repair and decoration of the hall. The BTH&I has relied on the Council to meet its funding gap and has not sought to find other funding to meet its needs. There is no fundraising activity, no other external grant sources have been sought, prices were left unaltered for 5 years from 2011, alternative income streams have not been sought and there has been limited opportunity to reduce operational

costs, for example, through energy efficiency improvements. The dependence on the Council income stream means that in effect, all activity at the town hall, including commercial operators as well as local community organisations, is subsidised by Buckfastleigh council tax payers through its council tax.

VAT

The lack of clarity about the role of the charity and its relationship with the Town Council has created a complex VAT matter which needs to be urgently resolved. In brief, the Town Council undertook to carry out some costly repair work on the Town Hall in 2009. Following advice, the Town Council took an “Option to Tax” on the town hall which meant that it could reclaim the VAT back on the building work but in return would charge VAT on lettings and services from the Town Hall. In 2015/16 when the current Councillors separated the two organisations, the BTH&I stopped charging VAT as the TH&I was not registered for VAT and could no longer charge VAT on its supplies. The issue was identified by our auditor and we have subsequently taken further advice from our accountant. It appears that HMRC see the Town Council and the Charity as “one and the same for tax purposes”. If this view continues, then it is possible that we will have to register the town hall charity for VAT and start charging for VAT at 20% on the bookings. However, we believe that the two organisations should never have been properly seen as one and the same, and that the actions we have taken to separate them on administrative make us compliant with the relevant local authority and charity legislation. A further separation of the Town Council as the charity trustee would make the distinction between the two organisations even more apparent but the final decision rest with HMRC.

4. Services and promotion

There is no business plan or vision for the town hall and there are often conflicting user needs. There has also not been any attempt to identify the local community need for the space – sports hall, office space, wedding venue, meeting rooms, performance venue, etc. There is also minimal promotion or marketing of the space to the local community or wider users. The poor state of the facility limits opportunities in this area.

Proposal

The situation for the Buckfastleigh Town Hall and Institute charity is almost identical to that which existed for Victoria Park Buckfastleigh charity (VP) when Teignbridge District Council (and formerly Buckfastleigh Urban District Council) was its charity trustee. This is not surprising given that both VP and BTH&I were established at the same time, by the same people in 1887 using the standard charitable constitution available.

In both cases, the local authority became the charity trustee but managed and ran the charity as if it were its own asset, and not always in compliance with the relevant charitable or local government rules. In both cases the trustees have had insufficient oversight of the charity and the business operation has suffered from increasing financial pressures and poor management. Lack of direction has led to a deterioration of the physical infrastructure and prolonged lack of investment is leading to an inevitable catastrophic failure or closure of the facility.

It is proposed that we move to create a new, independent board of trustees entirely separate from the Town Council. They would be responsible for managing the charity and its asset and developing a strategic direction for the future. This approach has already been discussed and agreed by the BTH&I trustees at their last meeting. However, final responsibility for any decision rests with the Town Council as the corporate trustee.

The Town Council are asked to consider and decide on the following proposal:

1. Buckfastleigh Town Council to agree to transferring the role of trustee to a suitable independent organisation.
2. That a company limited by guarantee, with charitable purpose, be set up to act as the charity trustee.
3. Advertise for 5-6 directors for the new charitable company, with the skill set needed to set up a new governance structure and begin the process of defining an operational and business plan. The full town council to consider applications and agree appointments.
4. Transfer the ownership of the physical building and land to the "Official Custodian for Charities".
5. Aim to transfer trusteeship to the new trustees by 1 April 2019 and advise the Charity Commission of the transfer of the trusteeship.
6. Continue to provide appropriate management, financial and administrative support to the new trustees on an interim basis until the transfer has been completed.

Summary

We need to take some urgent and radical action to secure the ongoing future of the Buckfastleigh Town Hall and Institute, to make sure that it is properly managed, has access to the resources it needs to address its structural and organisational issues and is responsive to the needs of the community. We also need to put some proper governance and accountability around its governance structure so that it is compliant with all the necessary legislation and does not expose users or trustees to risk of which it is unaware.

It is a significant responsibility to run a facility which is open to the public, used by all sections of the community including vulnerable adults and children, delivers such a range of different activities and is a working base for our employees, and one which needs to be managed carefully. If the town hall is going to last a further 100 years we need to make some significant changes to the way it is run and managed.