
MAYOR'S SHOP AND CHARITABLE FUND

**Responsible Cabinet Member – Councillor Chris McEwan
Efficiency and Resources Portfolio**

Responsible Director - Paul Wildsmith, Director of Corporate Services

SUMMARY REPORT

Purpose

1. The purpose of this report is to consider the future of the Mayor's fund and charity shop.

Background

2. In January 2009 as part of the budget proposals the Cabinet considered the closure of the Mayor's Shop. The report to members at that time highlighted the requirement for significant investment necessary to bring the shop up to standard. The following decision was made:-

‘the closure of the Mayors Charity shop be deferred whilst discussions continue with the shop volunteers and local charities to investigate options to retain the shop whilst reducing the Councils' financial contribution and no decision be taken until a further report is presented to Cabinet’

3. An estimate had been given for the mechanical and electrical works at that time for approximately £30,000. A decision about the financial commitment to these works was put on hold pending the completion of the review. The shop operated between the Cabinet meeting and September as it had been doing prior to the decision of Cabinet.

Summary

4. A review was conducted in accordance with the recommendation of Cabinet into a range of options for the future of the shop. The review has highlighted a number of issues with the shop, its legal status and the current management arrangements. The legal and health and safety risks were reported to Council's Corporate Management Team in early September. Immediate steps were taken to improve the management of the shop by the removal of certain goods and advice being provided to the volunteers. At the same time the volunteers requested repairs which resulted in the shop being closed pending an electrical assessment.
5. As a result of the legal issues with the management of the shop and the need for urgent electrical work before the shop could re-open amounting to £7,891.39, the Director of Corporate Services took the decision not to re-open the shop prior to a decision being made

about its future. Officers met with the Mayor and the volunteers in the shop to explain the situation and deal with the practical issues.

6. The review has considered a number of options for the future management of the shop and operation of the charitable fund. Unfortunately none of the options for the retention of the shop is without difficulties. The report therefore proposes an alternative fund raising plan for the charitable fund. A summary of the options is set out at **Appendix 1**.

Recommendation

7. It is recommended that :-

- (a) That 2A Duke Street is advertised for rent on a commercial basis
- (b) That the Mayor's Charitable Fund Management Committee be supported to establish itself as a registered charity
- (c) That ongoing support is provided to the registered charity fund raising activities through the Mayoral Support Officer and a budget of £5,000 is made available to the Committee, subject to compliance with legal requirements, to support fund raising activities.

Reasons

8. The recommendations are supported by the following reasons :-
 - (a) To make efficient and safe use of the Council's physical resources.
 - (b) To ensure compliance with legislative requirements.

Paul Wildsmith
Director of Corporate Services

Background Papers

No Background papers were used in the preparation of this report.

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S17 Crime and Disorder	There are no implications for Crime and Disorder
Health and Well Being	There are no specific implications for Health and Wellbeing
Sustainability	There are no specific implications for sustainability, as the recycling activities of the shop can be carried out equally by other charity shops in the town.
Diversity	There are no specific implications for diversity.
Wards Affected	The shop is located in Central Ward
Groups Affected	The volunteers and users of the shop many of whom are elderly may be more affected by the decision than others in the area.
Budget and Policy Framework	The decision does not affect the Council's budget and policy framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	Support to a charity does not directly support the strategy but some of the activities of the groups supported will contribute to the objectives.
Efficiency	The proposal is a reduction in the Council's current expenditure on the charitable fund, it also releases a property for commercial rent which will bring income into the Council.

MAIN REPORT

Information and Analysis

9. The Mayor's Charity Shop in Duke Street is a freehold property held by the Council which is part of the larger premises at No. 29 Skinnergate leased by the Co-op Bank. The Mayor's 'Charity' Shop has occupied the premises since the mid 1980s. The then Land and Property Sub-Committee took the decision on 24th September 1985 that No 2A Duke Street be used as the Mayor's Charity Shop with the Council bearing the rent the rates and the relocation costs. That arrangement has continued to the current day.

Legal Status

10. The Mayor's Charitable Fund Committee shop has been established since the mid 1970's when the Council agreed to support a shop for the sale of goods to raise income for the charitable fund. The status of the fund has never been clear it was acknowledged that it was difficult to enter into agreement to legitimise the occupancy of the premises on Duke Street as it was not clear who the tenant was. On 30th August 1988 the (then) Borough Solicitor provided detailed advice to the Chairman of the Charitable Fund explaining the steps necessary to establish a charity. Since that time it appears that the decision whether or not to register the charity has never been revisited. There is therefore no formal lease between the fund and the Council and the fund has never been registered as a charity with the Charities Commission. The Charities Act 2006 raised the threshold so that all charities over £5,000 must register with the charity commission. The income with that of the shop is in excess of £40,000 a year.
11. The Mayor's fund holds money on trust for charitable purposes but with no formal arrangements. Responsibility for the activities of the trust rests with the collection of individuals which together form the Mayor's Charitable Fund Management Committee. The charity holds its own bank account, insurance and bills for the shop are paid in the name of the Management Committee from the charity funds. The Mayor is the sole signatory on the bank account. The insurance policy is in the name of Mayor's Charitable Fund Management Committee. The members of that committee would therefore be the group of individuals who make up the trustees. The Mayoral Support Officer within Democratic Services takes responsibility for the accounts and organises meetings of the Committee. The Committee is not a committee of the Council and the Council does not hold the funds. The Committee is therefore an informal trust with responsibility for the activities of the fund raising and the shop. The Council owns the property and provides support to the Committee.

Financial Position

12. The Committee currently pays no rent and the rental value for the property in that location is currently estimated at approximately £20,000 per annum and this has historically been higher and may well rise again in the event of a recovery of property and letting values. The Council also absorbs the rates for the premises through discretionary and mandatory rate relief. The current community grant fund cost to the Council after relief is £1, 645.88. Repairs and maintenance costs for the property are borne by the Council. The current budget is £10,000 to cover the potential electrical works, however ongoing maintenance costs are likely to be in the region of £2,000 per annum.

13. The shop raised approximately £45,000 in income in the 2008/09 financial year. The income is allocated by the Committee to a range of charities and community based projects. The Mayor and volunteers have taken the decision not to draw on the account pending the outcome of this decision by Council.
14. Extensive investment in the region of £31,000 for mechanical and electrical works is required to make the premises compliant with Health and Safety and Building Regulations. The premises are also extremely dated in terms of external appearance, internal layout, decoration and functionality. A full refurbishment to bring the shop up to modern day standards (to include a new shop front and the work above) is estimated at £50,000.
15. The Mayoral Support Officer provides administrative support to the Management Fund Committee by arranging meetings and preparing minutes, correspondence etc. There is no charge made to the Committee for this time.

Operating and Running Costs of the Shop

16. The Council's annual operating and running costs of the Shop on an ongoing basis are as follows:-

	£
Annual Repairs and Maintenance	2,000
Estates Officers' Time	1,000
Mayoral Support Officer's Time	2,800
Rate Relief	1,646
	7,446

17. The loss of rental income to the Council in respect of the Shop is approximately £20,000 per year. It is therefore costing the Council approximately £27,446 each year to support the Mayor's shop.
18. Income from the shop is utilised for the shop's insurance and running costs (electricity, telephone, bank fees etc.). This is approximately £2,000 per annum. If this is deducted from the Shop income of £45,000, there is a balance of £43,000 being donated to the Mayor's chosen charities and donations to local organisations and individuals who seek support from the Fund. However it is costing the council £27,446 to enable the £43,000 to be raised.

Management of the Shop

19. The Association of Charity Shops has developed The Code of Charity Retailing 2009 (**Appendix 2**) which sets out the key responsibilities of those responsible for the management of charity shops. The code provides a helpful summary of the range of issues facing the shop. In particular the Code lists the areas covered by legislation with which managers must comply. A charity shop which is supported by the Council for the Mayor should aim to meet the standards set out in the Code. The review has considered the compliance with this standard and the conclusions are set out below:

Data Protection

20. The shop holds limited personal data in relation to volunteers at the shop. All other personal data is held by the Mayoral Support Officer and would be covered by the Council's data protection policies.

Disability Discrimination and other Equality and Employment Issues

21. As a minimum the Committee needs to have in place:
- (a) a clearly defined purpose of the role that volunteers have within it
 - (b) role descriptions for volunteer positions
 - (c) a recruitment policy that does not discriminate but respects, encourages and represents the diversity of Darlington's community
 - (d) training to help volunteers to perform their volunteer activities, including training in such areas as health and safety, cultural sensitivity and secure handling of cash, cheques and credit card payments, as well as donations in kind.
22. It would also be a good idea for the Committee to put in place:
- (a) a well-defined and communicated volunteer management plan that is respectful of the volunteer's abilities and time commitment and includes:
 - (i) a recruitment policy
 - (ii) a description of all volunteer roles
 - (iii) an application and interview process
 - (iv) possible stipend and reimbursement policies
 - (v) a statement of which people have supervisory responsibilities over which volunteers and any other personnel policy information
 - (vi) periodic volunteer performance appraisals to communicate to the volunteers how well they are doing, or where additional attention is needed
 - (vii) a process for reviewing and responding to ideas, suggestions, comments and perceptions from volunteers
23. Ad hoc arrangements provide basic training for volunteers on the practices of the shop but these are informal and provided by the volunteers themselves and the Mayoral Support Officer. However, there are no formal arrangements in place.

Charity Law

24. The Charities Act 2006 raised the threshold so that all charities over £5,000 must register with the charity commission. The income with that of the shop is in excess of £40,000 a year.
25. A charity with more than £10,000 income must comply with a range of legislative requirements. These include the appointment of trustees, the submitting of accounts to the Charity Commission, a governance document and compliance with the requirements about the purposes of the charity. The Mayor's fund as it is not registered does not comply with any of these requirements. Steps should be taken to register the charity before the Management Fund Committee engages in further fund raising activity. At the current time the Mayor's Ball raises funds for the charities chosen by the Mayor, and these are charities in their own right but fund raising which is used to provide money for groups which are not

themselves registered charities should not be described as charity fundraising as this is contrary to the 2006 Act.

26. If the Committee is to register as a charity it will require governance and trustees. Trustees must be cognisant with charity law and comply with it. They must either be willing volunteers or paid professionals. There is a recognised shortage of willing volunteers prepared to take on these responsibilities and carry them out in a diligent and reliable manner for no personal recompense and with the potential personal risks. Unless the charity is incorporated trustees can bear personal liabilities if the charity has debts it is unable to pay. The payment of professionals is costly and is unlikely, given the current income of the charity, to be an appropriate expenditure. There would be significant risks in establishing a Mayor's charity if the charity continues to run the shop in its current format. There are Mayor's Charities registered with the commission. There are no other Mayor's Charities with a charity shop. Money is raised through fundraising events. Details of all Mayor's charities on the Charity Commission website are attached at **Appendix 3**.
27. There are a number of financial benefits to being registered as a charity in particular the ability to benefit from additional funding through GIFT aid. However as the charity is not registered the benefits achieved by the current charitable donations are not as great as they would be to registered charities within the town.

Health and Safety Issues

28. The mechanical and electrical report highlights that the existing premises are desperately in need of attention if a potentially serious health and safety incident is to be avoided. To do nothing in relation to this issue alone is not an option.
29. The current layout of the Shop with first floor storage space accessed by a flight of stairs with a chairlift, is not appropriate for the type of donations handled or suitable for the volunteers who are mainly elderly. There are also serious health and safety issues in relation to the layout of the Shop itself. The type of materials held on the premises increases the risk of fire and the layout of the shop lead to a high level of risk for volunteers working in the store room upstairs in the event of a fire. Escape routes including the main entrance to the shop are frequently blocked with donations and items for sale.
30. The Committee has not appointed a manager of the shop to take responsibility for the shop or the volunteers who run it. All other charity shops within the town have a paid manager who takes responsibility for the shop, including health and safety aspects, and the organisation of volunteers.
31. Under new corporate manslaughter law and the Corporate Homicide Act 2007, organisations are required to ensure that they have robust systems of risk management in place. Those in control of the organisation have responsibility for ensuring that all risks have been adequately assessed and treated and that the correct policies are in place to prevent serious incidents from occurring and that training and support is available for all employees including volunteers. Meetings of the Committee decide how to allocate the charitable funds it is difficult to separate the ability to decide how assets are spent from the wider responsibility for the charity and therefore for the safety of the volunteers and the public in the shop. In the absence of a Shop Manager, there is no-one designated to undertake risk assessments in relation the shop.

32. At the current time the shop is the responsibility of the members of the Management Fund Committee. There are no health and safety policies in place and no arrangements can be demonstrated.

Sale of Goods and Trading Standards

33. The shop currently sells a range of goods with no oversight over the safety of goods. The same safety regulations apply to the sale of second hand goods as apply to new goods. This means that all electrical goods must be tested and safe, that products such as child seats and helmets, toys should be sold with instructions about the correct use and the age restrictions on toys. Goods such as child seats and helmets may have a history which has compromised their safety which it is not easy to check. Children's toys should have the appropriate safety information.
34. In the event that a complaint is made the Council's own trading standards section would have a duty to investigate and prosecute if appropriate. The Committee have responsibility for damage caused by failure to comply with statutory duties or negligence on the part of the shop or volunteers.

Use of Donations

35. There are no controls over the donations received to ensure that they are used for charitable purposes. There is no formal pricing structures or method of ensuring that prices are charged.

Insurance

36. The Council has the property at 2A Duke Street on the insurance list as part of its property portfolio. The Mayor's Charitable Fund Management Committee has a separate insurance policy with Zurich which includes public liability insurance. Insurance will however be dependent on the Management Committee complying with relevant legislation, training of volunteers and carrying out appropriate risk assessments.

Liabilities

37. Where the body is a group of individuals for example, a body of trustees or the executive committee of an unincorporated association, they can be the subject of civil claims as individuals but will have a right to be indemnified out of the assets of their charity in respect of liabilities, costs and expenses if it can be shown that they have been properly incurred in connection with their duties. If trustees have acted in this and other matters reasonably, with due diligence and in accordance with their powers, they will have an indemnity from the assets of their charity. Where the assets of the trust are exhausted the trustees may be personally liable. Where there is criminal negligence the individual members of the trust could be prosecuted.

Governance and Trading Issues

38. The Mayor's Charitable Fund Committee is separate from the Council and the Committee runs the shop therefore restrictions on local authority trading do not apply. There would however be restrictions on the Council engaging in activity if the shop were to be used as eg

a recycling centre or other Council run shop. This prevents the Council from taking over the management of the shop.

Summary

39. The Mayor's 'charity' shop cannot continue to run in its current format. The issues are varied but the ongoing risks associated with the running of the shop makes this a significant risk for the Mayor, the volunteers and indirectly the Council.

The Lease

40. The Mayor's Charity Shop forms part of a larger property with the Co-operative Bank. The lease will continue for a further 3 years. One option may be to sell or rent the full premises including the shop. This may be a viable option if the shop is making a commercial rent.

Temporary Closure of the Shop

41. On 15 September 2009 Community Services were called in at the request of the volunteers to repair a diffuser that was hanging from a light fitting in the main area of the shop. The Electrical Services Manager who visited the premises informed the volunteers that he was unable to repair the clip holding the diffuser and he had done his best but it was unsafe. He then sent an email to the Estates and Property Manager which stated that the electrics were in an 'absolutely dire condition' and presented a risk to the safety of the volunteers and general public. The shop was closed in response to this email while further enquiries could be made. The Electrical Services Manager visited the shop on Wednesday 23rd September 2009 to conduct a further assessment to identify the urgent works necessary to make the shop safe. Following receipt of this report, the estimate for repair and the preliminary findings from the Borough Solicitor in relation to the legal position for the shop, the Director of Corporate Services took the decision to keep the shop closed until its future could be considered by Council.
42. Further work on the review has been carried out to find a long term solution and these are detailed below however none of the options for the retention of the shop is without difficulties.

The Options available.

43. It is recognised that there is an aspiration to see a continuing fund for Darlington providing small scale funding for community projects. There is also a desire to keep the Mayor's charity shop open. There has to be a recognition however that the current level of risk and the unlawful status of the shop cannot be sustained and action must be taken which will significantly change the current arrangements. At a time when finances are so tight there is the need to demonstrate why the council is continuing to put resources in to a shop which is not part of its core business; is in competition with charity shops in the town and presents high risks for the council, the Mayor and the volunteers involved. The premises and the property could be let on a commercial basis providing an income for the Council. A summary of the range of options considered is attached at **Appendix 1**.

Management Options for the shop

44. St Theresa's Hospice have expressed an interest in managing the shop on the basis that the Council takes on full responsibility for the refurbishment costs at between £33,000 and £50,000. The Committee would cover all insurances and legal requirements for the building. The Hospice would take a proportion of the proceeds for the Hospice with the remainder going to the Management Fund Committee. The difficulty with this option is that a charity must be established to enable funds to be raised for groups in the town. The charitable status of the Hospice could only be applied to funds raised for that charity. This would mean that the current Committee would need to establish itself as a charity and negotiate an agreement with the hospice along the lines proposed. The responsibility for running the charity would sit with the volunteers and they would have liabilities as a consequence but these could be limited if proper arrangements for the management of the shop were put in place and there is compliance with charity law. Nevertheless willing and competent trustees would need to be identified. A proportion of the proceeds would be applied directly to the Hospice.
45. The Council has been approached by a couple who have experience of running community projects in Darlington and who would be interested in taking on the Mayor's shop. They propose to establish a Community Interest Company rather than a charity which would run the shop and profits would go to a Darlington fund. They would appoint a part time manager of the shop who would receive a wage and all running costs of the shop would be deducted from the profits before distribution of the fund. The option would keep the shop going and would want to make use of the volunteers provided they will accept the requirements of the manager. Decisions will rest with the Directors of the Community Interest Company and would not sit with the volunteers. This option has not been fully worked up and would depend on support from the Council including meeting the costs of the refurbishment of the shop.

Closure of the Shop

46. If the Council were to take the decision to withdraw the premises currently made available for the Mayor's Shop, the Management Fund Committee could continue to meet and continue to run a series of fund raising events to raise money for the Mayor's nominated charities. The money raised could be raised for and given directly to other charities. This would not require a charity to be established. It would not however be possible to claim to be a charitable fund if money raised was not given to charity, this would prevent donations to community groups.
47. If the decision was made by the Management Fund Committee to register a charity the volunteers would need to appoint trustees and ensure that they were aware of their duties and responsibilities and the potential liabilities they carry. There would be ongoing risks for the trustees appointed. Risks would however be significantly reduced if the activities of the charity were confined to fund raising events without the running of a permanent shop. Support could be available to the trustees through Evolution to help them establish themselves in a way which limited risk.
48. Activities could include Annual Flag Day, Monthly Market Stall, Raffles and other traditional Fundraising events such as bag packing, social events, coffee mornings and sponsored events. In order to support the activities of the charity the Mayoral Support Officer could continue to support the meetings and provide the time currently spent on the

charity shop on fundraising events. A budget of £5,000 could be provided by the Council to help in the provision of accommodation for meetings, arranging events and ensuring compliance with legislation. This may not achieve the same income as it currently achieved by the shop, but it will put the Committee on a sound legal footing and will continue to provide a fund to raise money for groups within the town. The Mayor's Ball could continue to provide a donation to the Mayor's charities or the fund once registered as a charity. The Committee has access to interest arising from the Alan Stainsby Murray Trust for distribution when interest is sufficient.

Conclusion

49. The current arrangements for the shop and the charitable fund breach law and place significant risks on the volunteers, the Mayor and the Council. Those arrangements cannot continue. There are alternative options for the management of the shop but a decision as to whether to pursue these offers rests with the Management Fund Committee whilst decisions about the property, financial support and officer support rest with the Council. If the Charity is established the funds raised through events and activities can be managed in the same way as the funds of the charity are currently managed through the Committee with the support of the current Mayor of the day.

APPENDIX 1

SUMMARY TABLE

Options	Repairs	Lease	Legal Issues	Risks	Costs to Council	Proceeds for Local Groups	Proceeds to other charity	Summary
1 - No shop, no charity	As required for commercial lease/sale	Commercial	None	None	None	0%	Very limited eg Mayor's Ball	Provides no charity donations but is low cost for the council and low risk
2. No shop but charity fundraising	As required for commercial lease/sale	Commercial	Will need to register the charity if income over £5,000 and appoint trustees.	Risk in governance of charity but no shop management risks	£5,000 support for fundraising, Mayoral Support Officer time.	Up to 100% of profit	Dependent on Committee	Provides charity donations and is low cost for the Council. Committee maintains control. Minimised risk.
3. Management Committee establishes a charity to run the shop.	Repairs to be met by the Council	Could be discounted in the short term but would need to move to a	Governance/ Management of the shop. Trustees with skills to manage a complex	As detailed in the report. Management of the shop and the charity or profit to	£50,000 repairs £10,000 R&M Mayoral Support Officer	Up to 100%	Dependent on Committee	Provides charity donations. Cost to the Council is high. Risks are

		commercial lease.	charity would need to be appointed.	appoint to these roles.	Rent Free Period Rate Relief			high, Committee maintains control.
4. Hospice Option	Council meets costs	Reductions and at least 50% reduction on commercial. 1 year rent free	Would need to establish a charity with responsibility for running the shop and negotiate arrangements with the Hospice.	Shop management by paid manager but governance of charity and liaison with the two charities an issue.	£50,000 repairs Mayoral Support Officer Charity Governance Rent free period Rent reduction on commercial rent. Rate Relief	20 – 40% of proceeds after management costs deducted	60- 80% to Hospice once management costs deducted	Provides donations shared with Hospice. Cost to the Council is high. Risks are minimised. Committee maintains some control.
5. CIC Option	Shared costs, with initial investment by the Council	Commercial 1 year rent free	New CIC to be established with lease and governance responsibility for the fund.	CIC untested and not yet established. Control rests with Directors of new CIC.	£50,000 initial investment Rent free period Rate Relief	Dependent on Directors of CIC	Dependent on Directors of CIC	Provides donations. Ongoing cost to the Council is low. Risks are unclear. Committee has no control.