

Town Hall, Darlington DL1 5QT
DX 69280 Darlington 6
web site: <http://www.darlington.gov.uk>

**ALL MEMBERS OF
THE COUNCIL**

Date : 22 June 2016
Please ask for : Luke Swinhoe
Direct Line : 01325 405490
Email address : Luke.swinhoe@darlington.gov.uk
Your Reference :
Our Reference : LW/JW
Document Name : 160622-All Members

Dear Councillor,

MTFP Library Service Proposals, Report to Cabinet 22 June 2016 and
Council on 29 June 2016.

I need to give you an update about the legal advice

As mentioned in the legal advice about the library the legal obligations about Crown Street are not completely clear.

The issue that has been the main focus was over the possibility of a covenant (because this was set out in the 1983 statutory declaration of the former Assistant Borough Solicitor).

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.

I think the covenant issue (mentioned in the 1983 statutory declaration) may have been a misdescription and that what the Assistant Borough Solicitor was meaning to say was that the land was conveyed on trust for it to be used as a library.

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 website, 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)** 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 is attached to this Letter

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.

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)

Rather than an application to the Lands Tribunal we will need to approach the Charities Commission. They will form a view about whether the land is held on trust. If it is we would need an order from the Charities Commission to allow disposal (it is only likely to be the 1885 conveyance – the most northerly building) or before it can be used for other purposes. Any proceeds of sale would be held for purposes that accord to the original charitable purpose.

This would not prevent a decision being taken to relocate the library.

Officers will however continue to review matters in the light of any additional information

Yours sincerely

A handwritten signature in black ink, appearing to read 'Luke Swinhoe', written in a cursive style.

Luke Swinhoe
Assistant Director, Law and Governance

Enc.

Darlington.
Training
College—
continued.

By indenture dated 9th September 1899, and made between the Right Hon. Henry De Vere Baron Barnard of the first part, the Hon. William Lyonel Vane, and two others of the second part, and Sir Theodore Fry, Bart., Samuel Watson, Robert Benson Jowitt, Thomas Sterry Norton, James Cochran Stevenson, William Whitwell and George Jack Cockburn, trustees of the British and Foreign School Society of the third part, a piece of land situate in Duke Street, Darlington, being part of lot No. 362 shown on the estate plan and containing in the whole 2,642 sq. yds., bounded on the north by other hereditaments belonging to the purchasers, on the south by Duke Street, on the east by hereditaments belonging to the Darlington Grammar School and on the west by other hereditaments belonging to Baron Barnard, was in consideration of the sum of 382*l.* 2*s.* 6*d.* conveyed to the parties thereto of the third part (subject to the conditions, restrictions and stipulations and charge contained in the schedule to the indenture) upon the same trusts as are contained in the foregoing indentures.

Public Park.

Public Park. By indenture dated 26th February 1877 and made between Henry Morgan Vane the Official Trustee of Charity Lands for the time being constituted under the provisions of the Charitable Trusts Acts, of the first part, John George Grace, Charles Rutter Fry, Thomas Robinson, John Manley and William Thompson, all of Darlington, being the trustees of "James Bellasses' Charity" or the "Poor Howdens" at Darlington, of the second part, and the mayor, aldermen and burgesses of the borough of Darlington, of the third part, it was witnessed that in consideration of 3,075*l.*, the parties of the first and second parts conveyed all that piece of land containing by estimation 19*a.* 3*r.* 33*p.* with the messuages and buildings thereon and then used as a public park situate in the parish of Blackwell, with all appurtenances, &c., to the said mayor, aldermen, and burgesses, their successors and assigns, to be dedicated to and appropriated for the purposes of a public park for the benefit of the inhabitants of the borough of Darlington.

By indenture dated 28th November 1889, and made between Francis Greenwell and Maria Forster Wood of the first part, John Richard Stubbs of the second part, and the mayor, aldermen, and burgesses of the borough of Darlington (thereinafter called the Corporation) of the third part, certain freehold hereditaments forming part of the Little Polam Estate and containing 2*4a.* 0*r.* 28*p.*, lying on the north side of the Public Park, together with the bridge over the river Skerne delineated in the plan drawn on the indenture, and a right of way to and from Grange Road were conveyed to the Corporation and their successors, in fee simple, but no trust was thereby declared.

Public Library.

Public
Library.

By indenture dated 23rd October 1885, and made between Sir Joseph Whitwell Pease, Bart., M.P., and Arthur Pease, of the one part (thereinafter referred to as the grantors) and the mayor, aldermen, and burgesses of the borough of Darlington, thereinafter called the Corporation, of the other part, it was witnessed that the grantors voluntarily and without valuable consideration conveyed to the Corporation a piece of land situate at the corner formed by the conjunction of Mill Street and Crown Street in Darlington, containing by admeasurement 943 square yards, and also all buildings thereon, together with a right of way over Mill Street and Crown Street, and a back road on the east of the said premises, and such rights of drainage and similar easements as the Corporation might from time to time reasonably require, to hold the same unto and to the use of the Corporation in fee simple upon trust for the purposes of a public library for the borough of Darlington.

Technical College.

Technical
College.

By deed dated 27th May 1896, and made between Frances Helen Pease, John William Pease, and Henry Fell Pease (trustees under the will of Edwin Lucas Pease), thereinafter referred to as the vendors, of the one part, and the mayor, aldermen, and burgesses of the borough of Darlington, thereinafter referred to as the purchasers, of the other part, it was witnessed that in consideration of the sum of 1,733*l.* 18*s.* 6*d.*, the vendors granted and conveyed to the purchasers a piece of land situate in Northgate, in Darlington, and containing by admeasurement 2,406 square yards, together with the cottages, stables, and other buildings erected thereon, and a right of way for all purposes over an intended road to be made on the south side of the said premises to and from Northgate aforesaid, to hold the same unto and to the use of the purchasers in fee simple subject to all easements (if any) affecting the same; and the purchasers covenanted to erect and repair a

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