
THE LIBRARY SERVICE – SUPPLEMENTARY INFORMATION

**Responsible Cabinet Member -
Councillor Nick Wallis, Leisure and Local Environment Portfolio**

**Responsible Director -
Paul Wildsmith, Director of Neighbourhood Services and Resources**

Summary

1. This document gives Members some additional information, including issues recently raised by the public and Members. It is intended to provide information to supplement the main report.

The Crown Street Library

Background

2. Crown Street Library opened in 1885 following a bequest of £10,000 which had been left in the will of, Edward Pease who died in 1880.
3. The terms of the bequest was to allocate £10,000 'for the education of the poorer classes in the Borough of Darlington either by establishing or founding or assisting in the establishing or founding a free library or scholarship for elementary schools for boys and girls.
4. The Executors of Edward Pease's Estate were his brothers, Sir Joseph Whitwell Pease and Arthur Pease.
5. The executors and trustees of the will chose to construct a public library. Building work on the original library building commenced in 1884 and was completed in 1885.
6. On 23rd October 1885 the original land and building of the library was transferred to the 'Corporation of Darlington' by way of a deed of gift by the two executors of the Estate. Darlington Borough Council is the statutory successor to the Corporation of Darlington.
7. The land and buildings which today form the Crown Street Library was transferred in three separate transfers to the Corporation of Darlington. Tranche 1 in 1885, tranche 2 in August 1900, and tranche 3 in July 1930.

8. The Land Registry title document shows that the Council holds the freehold of the land. It also states that as the deeds and documents of the title were lost, the land is subject to any restrictive covenants that may have existed before 9th September 2010 and are capable of being enforced.
9. There is an 1983 statutory declaration by a former Assistant Borough Solicitor which says that deeds and documents concerning the Crown Street Library were lost in 1974 (probably during local government reorganisation with Durham County Council). The statutory declaration goes on to say that the northern most part building (the original part of the library building) was held by the Council, subject to a restrictive covenant that it should be used for the purposes of a public library forever.
10. In October 2015, the Charity Commission was forwarded a copy of the statutory declaration made by the former Assistant Borough Solicitor and asked to comment on whether the property could be subject to a charitable trust. At that time the response received from the Commission was that there was insufficient information for them to believe that it was.
11. Despite further searches at the land registry the existence of a restrictive covenant could not be confirmed. Searches were then undertaken at the County Durham Archive, the Teesside Archive, with the Charity Commission and the National Archive's at Kew, in order to ascertain whether any historical documents existed which may confirm the position in respect of the land holding.
12. In June 2016, the County Durham Archive advised of a copy of an entry in a 'Report to Parliament of the Commissioners for Inquiry into Charitable Endowments in the County of Durham (1900-1904)', which under the heading 'Public Library' noted a conveyance of land and buildings at Crown Street, made on the 23 October 1885 to the Darlington Corporation to hold 'in fee simple upon trust for the purposes of a public library for the borough of Darlington.'
13. Following receipt of this document the Council forwarded a copy to the Charity Commission and asked for their view as to whether, in light of its contents, they now considered that the property was subject to a Charitable Trust. In July 2016 the Charity Commission advised the Council that the land is 'designated land' (land held for a particular charitable purpose) and that the Council ought to treat the land as being held on trust for the relevant charitable purpose (i.e. for a public library).

Crown Street as a building held on Trust

14. The trustee obligation was clarified by the Charity Commission in July 2016. The obligation arises from the (now lost) 1885 conveyance and the terms under which the property was conveyed [the evidence comes from the entry in the 'Report to Parliament of the Commissioners for Inquiry into Charitable Endowments in the County of Durham (1900-1904)']. The terms of the 1885 conveyance itself would have been sufficient to have constituted a formal deed of trust.

15. We have undertaken searches and been unable to locate a formal trust deed. During searches the National Archives in Kew were asked to review their records if a deed of trust was registered on the historic rolls maintained by the Chancery Division but is no evidence of registration. Neither are there any current records with the Charity Commission.
16. As has been mentioned, the original deeds and documents are no longer available, so apart from the description of Report to Parliament of the Commissioners for Inquiry into Charitable Endowments in the County of Durham (1900-1904), there is no other documentation that clarifies the trustee role in any further detail.

The Trustees

17. As the deed of gift of the building and land was to the Corporation of Darlington, any trustee obligation arising over the building and land would have been with the Corporation of Darlington. The current Council, Darlington Borough Council, is the successor corporate body with responsibility as 'sole trustee'.
18. Today Darlington Borough Council operates an executive model of decision making. This is in accordance with the Local Government Act 2000 (this legislation required local authorities to adopt new models of governance and decision making). Under the executive model of decision making the role of discharging the role of sole trustee falls to the Council's executive body, which is Cabinet. Cabinet takes executive decisions on behalf of the Council.
19. In this trustee role Cabinet discharges the role of 'sole trustee'. That is, the members of Cabinet are not individual trustees but act on behalf of the corporate body in the exercise the role of trustee.
20. To be clear the role of trustee is an executive (ie Cabinet) rather than Council function.

Decision making

21. There are two quite distinctive aspects to the decision making process about matters concerning the Crown Street Library.
22. The Service decision - members will be involved in the decision making process to consider the provision of the library service in Darlington. This will include consideration about whether to relocate the main library service from the Crown Street Library to the Dolphin Centre.
23. Crown Street Library – members of Cabinet have a statutory role of making the decisions of the Council in its capacity as sole trustee for the Crown Street Library trust. In exercising this role, Cabinet has a duty to act in the best interests of the trust.

How decisions are made

24. Last year following a review of Council services, a number of difficult budget decisions had to be made. These were informed from consultation and reviews of

Council services and spending. The Library Service was included in services under consideration and review.

25. The provision of a library service is a statutory duty under the Public Libraries and Museums Act 1964. Decisions about library service are made taking account of the local needs and resources (including the Crown Street Library building). In making decisions about the Library Service the provision of the service as a whole needs to be considered.
26. In making decisions, it is clearly relevant to take account of the existing way that services are provided. This will include the existing buildings like the Crown Street Library and the historical and beneficial background. However, the fact that the central library is provided from a building which is held on trust does not compel the Council to deliver a library service from that building in perpetuity. The trust obligations are to hold the building for a particular purpose, but it does not compel the delivery of a library service from that building by the sole trustee.
27. Decisions about how a library service is to be provided is one that Members have to decide in accordance with the statutory duty. This includes decisions about whether the central library service should continue to be delivered from the Crown Street Library or whether to relocate it elsewhere.
28. Clearly any decision to relocate the central library service from Crown Street to the Dolphin Centre will have serious implications for the future of the Crown Street Library and any decision will need to be taken in full knowledge of the impact of the decision.
29. Under the executive model of decision making some decisions can only be made by Council. Other decisions can only be made by the executive. Some decisions (such as decisions about the annual budget or policies that are part of the policy framework) are for both Cabinet and Council to be involved in, but with Council making the ultimate decision. Under this decision making model it is not possible to reallocate decision making if one part of the system of decision making is unable to make a decision. To put it another way executive decision making always stays with the executive and there is no non-executive decision making body that has the power in default to step into this role.
30. Until a decision is made to relocate the Library Service from Crown Street Library there is no decision for the sole trustee to make.
31. Members of Cabinet in the role of the sole trustee are not discharging the statutory role of decision making about the library service.

Member Interests (at 'ordinary' Cabinet and Council)

32. As the role of sole trustee of the Crown Street Library rests with Members of Cabinet, by virtue of this role (even though they have yet to meet in this capacity) they have a pecuniary interest when making in decisions at 'ordinary' Cabinet meetings and at Council meetings about library provision which are likely to effect the Crown Street Library.

33. This is likely to be the case with a decision to relocate the library service from Crown Street to the Dolphin Centre. A pecuniary interest would ordinarily mean a member is unable to participate in decision making about that matter. This would mean that all of Cabinet would be disqualified from participation in decision making concerning the future of the Crown Street Library. However, Cabinet need to be able to exercise their executive role and participate decision making about library service provision.
34. Similarly members of Cabinet would be disqualified from participation in decisions made by Council concerning the Crown Street Library. However, members of Cabinet are also members of Council and need to present, explain, debate, vote as well as to be accountable for the views of Cabinet to Council.
35. It is a circumstance where the provisions of the Localism Act 2011 concerning dispensations are of obvious relevance as the whole of Cabinet would otherwise be disqualified from decision making.

Under Section 33(2) of the Localism Act 2011 a dispensation can be granted, after having had regard to all relevant circumstances, if the authority:

(a) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or

(e) considers that it is otherwise appropriate to grant a dispensation.

36. This Council is operating executive arrangements, with Cabinet as the Executive decision making body. Any executive business involving consideration about the Crown Street Library, will mean (because each member of Cabinet has a pecuniary interest) that all of Cabinet will be prohibited from participating. Unless a dispensation is granted under S.33(2)(d) each member of Cabinet will be prohibited from participating in decision making about the Library Service that impacts on the Crown Street Library.
37. Members of Cabinet also need to be able to participate at Council, Scrutiny and other meetings about the Crown Street Library. The existence of a pecuniary interest will prevent participation on matters concerning the Crown Street Library. Members of Cabinet need to be able to present, explain, debate, vote, as well as to be accountable for the position of the executive at Council and other meetings. In

these circumstances it is appropriate to grant a dispensation to allow full participation, under S.33 (2) (e).

38. Under the Member Code of Conduct the Monitoring Officer has general powers to grant dispensations to members to allow participation. Under the Cabinet Procedure Rules the Chief Executive has the power to grant dispensations in respect of Cabinet business.
39. It is intended to grant dispensations to Councillor Dixon, Harker, Copeland, Cyndi Hughes, McEwan, Andy Scott and Wallis, under S.33 (2) (d) of the Localism Act 2011 from the Chief Executive and under S.33(2)(e) of the Localism Act 2011 from the Monitoring Officer. The dispensations will allow the members to fully participate in executive and non-executive meetings concerning the Crown Street Library and will last until the end of 2019.

Cabinet exercising the role of the Trustee

40. No meetings of Cabinet in the trustee role have yet taken place.
41. When members of Cabinet meet as the sole trustee, individual Cabinet members will need to declare interests about their role as Cabinet members in the 'non trustee' role. Approval from the Charity Commission will be required before Cabinet as trustee can implement any transaction in which the Council as local authority is involved.
42. Cabinet acting as sole trustee will need to consider, the implications and the options for the Crown Street Library should the central library service move to the Dolphin Centre. Further work will be needed to develop proposals for Cabinet acting as trustee to consider. These would need to be informed by how best to further the objectives of the trust. If the building is sold then one of the options could be the creation of a library endowment fund from the proceeds of sale.
43. In discharging the role as trustee Cabinet will need to make decisions which are in the best interests of the trust.
44. Any decision about the disposal of the Crown Street Library will need first to be subject to consultation about the proposals and is likely to need to involve the Charity Commission (depending on the decisions that are made by Cabinet acting as Sole Trustee).
45. Further Guidance will be given to Cabinet as Sole Trustee when they meet in that capacity. Guidance about the role of trustee is available from the gov.uk website.

Luke Swinhoe
Assistant Director Law and Governance