**Friends of the Victoria Hall**

**Submission to Ealing Council’s General Purpose Committee
acting as Trustee of the Victoria Hall Trust
26 September 2019**

1. **Introduction**
	1. This submission to the General Purposes Committee acting as the Trustees of the Victoria Hall Trust (the Committee) is presented by the Friends of the Victoria Hall (FoVH) for consideration at the GPC meeting on 26 September 2019. Demonstrating a united view of local residents and their organisations (and therefore the intended beneficiaries of the Trust), our submission makes recommendations on the choices put before you in the officers’ report. Details of FoVH are contained in Appendix 1.
	2. We welcome the fact that, for the first time, officers have attempted to provide you with a comprehensive explanation of the issues concerning the future of the Trust and its property. Inevitably, this has led to a substantial document with much fresh and detailed information that will be new to the trustee body. However we believe there are a number of serious errors and omissions in the report that this submission seeks to comment on. For ease of reference we have cross-referred our remarks to the paragraph numbering in that report (eg “Report 1.1.1”).
	3. Our submission has necessarily been prepared very quickly as a reply to the officer’s report which only became available less than a week before the GPC meeting. It should be read therefore as a first response and not necessarily as complete. We have felt it important all the same to table it at this point in order to correct what we feel are facts and conclusions that could mislead the trustees when they consider the report before them.
	4. Our submission deals with
	Background
	The need for independence of action
	The extent of the Trust property
	The Trust finances
	Independent valuation
	Alternative courses of action.
	5. The Committee is asked to
	(a) note the submission and accompanying appendices
	(b) agree the extent of the Trust property as detailed in Section 4
	(c) instruct Officers to recast the Trust accounts as presented to the 16 April 2019 meeting to take account of the corrections detailed in Section 5
	(d) approve the approach to the valuation of the Trust property taken by Sanderson Wetherill (SW) in their report dated 9 September 2019, but to require SW to review their conclusions based on the revised data on the extent of the Trust property and financial position in Sections 4 and 5
	(e) instruct Officers to investigate further the option 5 contained in para 4.14 of the Report.
2. **Background**
	1. A summary of the background is as follows.
	2. The Victoria Hall was built in 1887/88 with money donated by the public, on a vacant piece of land to the north of the new Town Hall then also being built. The Ealing Local Board was granted permission to allow this, on condition that the property was vested in the Board as Trustee and that no public funds were used in its construction or maintenance. The new building, comprising the main Memorial Hall, Princes Hall and associated areas (usually together referred to as the Victoria Hall but in this document called just “the Halls”) was opened in 1888.
	3. As set out in Report 3.4, on 6 November 1893 a Deed of Trust (the Deed) was signed. Management and control of the Halls was placed firmly in the hands of a Trustee Committee and a subordinate Management Committee. Over several years, profits from operating the Halls were distributed to local charitable bodies.
	4. In 1899 the Trustees agreed to allocate part of profits from the operation of the Halls to payment of pensions by the Almshouses Committee to eight former Local Board employees.
	5. In 1902/04, the Trustees made extensions to both the Princes Hall and the Victoria Hall, again paid for by public subscription. Further improvements funded by the Trust were made to the Halls in 1914. Full details of these and the Trustees’ minutes which record them are set out in a separate report *Victoria Hall, Ealing: history and extent*, as Appendix 2.
	6. In the 1920s, the separate Trustee Committee was absorbed into a general committee managing other of the Council’s lettable properties. When the last of the Almshouses pensioners died, the Council committee proposed instead that the Trustees should accept liability to fund the rents and upkeep of Coronation Cottages, charitable properties maintained through the Council’s Housing Revenue Account. This blurred the distinction between the Trust’s primary object to provide space for hire by local organisations (Report 3.4) and the secondary object to distribute any operating surplus to local charities.
	7. By 1936, a reduction in Halls lettings meant the Trust’s operating income was inadequate to meet its obligation to maintain the Coronation Cottages on a regular basis. For this reason, it was agreed (Report 3.6) that the Trust should lease the Halls to the Council for a fixed “rent”, which was paid to the Housing Revenue Account in lieu of maintenance of the cottages. Net revenues from Halls lettings went into the General Rate Fund.
	8. Subsequent increases in the “rent” and the eventual disappearance of any distinction between the Halls revenues and the Council’s general account are as set out in Report 3.6 to 3.8. The history since then is also explained, and other developments are referred to later in this document.
3. **Independence of action**
	1. As the Victoria Hall Trustee, the GPC is subject to important legal duties and responsibilities, spelled out by the Charity Commission in various publications. Amongst other things, these require understanding the purpose of the trust, compliance with the trust’s governing document, acting solely in the best interests of the trust, avoiding conflicts of interest eg in the role of Councillor and managing the charity’s resources responsibility. Hitherto, these duties have not been clearly explained to the trustees, and it is disappointing that the current report does not do this either. We would note that in its submissions to the Committee Save Ealing’s Centre sought repeatedly to highlight these responsibilities, but its contributions seem not to be appreciated.
	2. The makeup and operation of the General Purposes Committee since December 2017, when it was delegated the responsibility as Victoria Hall Trustee, is in accordance with the regular Council protocols. However, as directors of a charity the position is very different from that of other standing committees. As noted in para 2.7.7 of the Report, trustees have to operate completely differently from the normal methods of a Council committee as a part of the statutory body, and act solely in the interests of the intended beneficiaries of the Trust as defined in the Trust Deed. The Committee’s present constitution fails to recognise this, as did Council in December 2017 when delegating its powers to you.
	3. The Council also rejected a request in March 2017 for an independent individual to sit on the Committee, to represent the interests of the community as beneficiaries. In taking this position, the Council acted very differently from when it set up the Pitzhanger Manor Trust in 2012. Then, a full range of options was considered and the requirements of an independent trustee were noted and acted on (Cabinet report 20 March 2012). More recently, the Council has again taken a different approach in establishing the Parks Foundation, where after taking independent external advice it is sponsoring an independent set of Trustees (Cabinet report, 13 November 2018). There is no record of why this route was not followed for the Victoria Hall Trust, but it may be significant that a key factor noted in the 2012 report was that an independent Trust would lead to the Council losing control.
	4. This places an additional responsibility on you as members to act independently. Charity Commission guidance makes it very clear that in considering the options before you as trustees, you must put completely out of your minds any thoughts as to what might be best for the Council as the statutory authority. In this respect the financial position of the Town Hall is an ‘irrelevant factor’ as described in Report 2.7.7, and must not be taken into account in making your judgement. If you feel you cannot resolve this potential conflict of interest by ignoring the pressures the Council is under to dispose of the main building, then you should take no part in the Trustee’s decision making.
	5. Charity Commission guidance is also clear about the responsibility of the Committee to ensure that it has received genuinely independent advice before reaching its decisions (Report 4.38). The guidance you have received so far has failed totally to distinguish between the aims of the Council as statutory authority and the legal requirements of the Trust for the Committee to be able to demonstrate that it has been single-minded in pursuing only the interests of the Trust and the Objects of the Deed. This is for the following reasons.
		1. From its first meeting, reports to the trustees have been written to secure the disposal of trust property to Mastcraft following the Council run tender exercise in 2016 - ie before the Council recognised that the charitable Trust remained in being. Ever since then, the Council has shown through its actions that it has been committed to proceed with the disposal, whatever the requirements were for the trustees. The fact that the Victoria Hall is held for the Charity became a mere afterthought. Once the significance of the trust’s existence became clear the Council should have halted the disposal process in order to explore the options available to the trust’s future. It failed to do that and the current exercise to justify the disposal after the event is in clear breach of Charity Commission guidance.
		2. Before today, the committee has met as Trustee only three times in the 21 months since it was given the responsibility. In accordance with normal Council procedures the membership has had little continuity. In view of the key decisions which affect the Trust’s very existence it was incumbent on the Committee to ensure it met more frequently, and did not delegate key decisions to Officers. It is notable for instance that a GPC meeting scheduled for 14th February 2019 was cancelled ‘due to no business for consideration’, even though urgent items relating to the trust were in the public domain. These included a planning application that will demolish trust property.
		3. Previous reports to the Committee have been prepared by Officers whose prime responsibility has been the furtherance of the Council’s interest in disposing of the Town Hall to Mastcraft. Until the Valuation report before it today, to which we refer later, the Committee has neither sought nor been given any independent external advice on any of the issues which have arisen. Also, until today it has not been shown details of any of the exchanges with the Charity Commission on key issues concerning the future of the Trust.
		4. Meetings have been attended and addressed by senior Officers and the Leader of the Council, whose main concern has been the furtherance of the Mastcraft deal. While representatives of the public have been permitted to address the Committee, this has been within strict time limits and no open discussion has been permitted.
		5. The Committee has received no independent advice on the true cost and benefits of operating the Trust, nor have the accounts that have been presented to it by the Council been verified, despite this having been promised at the 16 April 2019 meeting. Corrections of errors which have been pointed out have not taken place, and new historical data have been presented buried in the pages of the property valuation which it was previously alleged were not available, and in turn have not been subject to scrutiny or audit.
4. **Extent of the Trust property**
	1. The history of how the Trust property developed has been mentioned above in para 2.5. We believe the extent of that property has been consistently under-stated by the Council, because it has ignored the developments which took place after the original building was opened in 1888. These are fully documented in Appendix 2.

* 1. Save Ealing’s Centre’s lawyers, BWB attached in its 29 January 2019 letter to the Charity Commission floor plans indicating the extent of the trust property which SEC had determined following its extensive research into the Trust development. These plans are shown at Appendix 3. They were copied both to the Council and to the Trustee, neither of which has responded to them, and they are not referred to in Sanderson Weatherall’s valuation. The plans show a significantly larger footprint than is indicated in those provided by the Council. They are further justified by reference to the survey of the Town Hall carried out for the Council in 1995 by Brown & Root Ealing Technical Services (BRETS). This shows data for the different parts of the Trust property as follows:

|  |  |
| --- | --- |
| **1. Victoria Hall** | Internal area (m²) |
| Main Hall | 321 |
| Stage incl side areas | 70 |
| Bar/Lounge | 40 |
| Artist’s Room 1 | 30 |
| Artist’s Room 2 | 14.5 |
| Toilets/changing | 34.5 |
| Kitchen/servery | 16.4 |
|  **Total** | **496.4** |
| **2. Princes Hall** |  |
| Lower level | 137 |
| Middle level | 101 |
| Upper level | 90.7 |
| Kitchen/servery/store  | 50 |
| Toilets/changing\* | 140 |
|  **Total** | **518.7** |

The figures above will be different from those using the method employed for the SW survey, as they do not include walls, stairs and voids. This results in their being between 12% and 15% lower than the SW figures for identical areas. There are also differences due to some spaces having been omitted from the SW study, as follow:

(a). The Princes Hall toilets were converted during alterations in 1990s into what are now the toilets at lower ground floor level accessed from the Town Hall lobby, but remain within the footprint of the original Princes Hall.

(b). The kitchen and servery adjoining the Princes Hall, together with the store room beneath the southwest staircase (now the bottom of the lift shaft) which were constructed in the ‘area’ or void between it and the Town Hall in the early 1900s.

(c). Additional backstage areas were added to the Victoria Hall in 1902/04, providing a bar/lounge, a further artists’ room, toilets and changing areas. These are still in place, though now used for different purposes.

4.3 In order to make a meaningful comparison with the SW figures, the BRETS data above have been increased by an average of 13.5% and are shown as adjusted totals below. In brief, the differences in total internal floor area between the valuation and the areas we believe belong to the Trust equate to around 27%, as follows (figures in m²):

|  |  |  |  |
| --- | --- | --- | --- |
| Area | A: Valuation\* | B: Adjusted Trust areas† | DifferenceB/A |
| Victoria Hall | 532.0 | 563.4 | 6.7% |
| Princes Hall | 370.8 | 588.7 | 58.7% |
| Total | 902.8 | 1,152.1 | 27.6% |

\*Data as calculated by Sanderson Wetherill (SW) using Council information
†Data based on BRETS 1995 survey for Ealing Council

Allowing for the adjustments above, the BRETS measurements are significantly larger than those made by SW. This has a major impact on the valuation, as referred to later.

1. **Trust finances**
	1. Valid data for the financial position of the Trust seem to be as far away as ever. New figures have been included in the Sanderson Wetherill (SW) report which purport to cover seven years profit and loss data for the Trust from2012/13 to 2018/19. This contradicts the Council’s assertion at the March 2018 meeting that it was not possible to produce this information, and this data requires far more validation before they can be accepted.
	2. No adequate answers have been provided to three major questions which were raised at the 16 April 2019 meeting. These were:
		1. Why has the Council been allowed the community discount on its use of Trust spaces (the “internal uses”)? These average 40% off the full rate, which would add 66% to the actual amounts which have actually been credited to the Trust, in 2018/19 nearly £22,000.
		2. Why has the Trust been informed that it is not possible to be allowed charity rebate on business rates? If it is possible to assess rates, it is also possible to give a rebate. It is clear that the Halls are separately occupied by the Trust and not the Council as statutory body. As such, application of the Valuation Office Agency's (VOA) technical manual for the rating of business (non-domestic) property clearly indicates that the Halls constitute a separate hereditament and should be rated as such. A full rebate would amount to over £34,000.
		3. Why has there been no challenge by Trustees to the higher rate of charge for staffing costs, which were arbitrarily increased from the date of the March 2018 report? This made a difference of over £81,000 in the costs allocated to the Trust.
		4. At the 16 April 2019 meeting, the Officer who presented the draft accounts admitted that an incorrect percentage had been applied when allocating a proportion of security and cleaning costs to the Trust (38.98% rather than 20.17%), and agreed this would be corrected. Why has this not been done? This equals an overcharge of £23,700.
	3. Broader questions arise over the way that costs are apportioned between the Trust properties and the rest of the Town Hall complex. The apportionment was undertaken by Council finance officers, with no independent verification of the methodology used and no discussion between the Trust and the Council of their fairness. Were the Trust’s finances managed as they should be there would be a written agreement between the Trust and the Council on cost apportionment. It is in the Council’s overwhelming interest to show that the Trust property is a burden on the Council’s general revenues, and the Council’s claims cannot be taken at face value.
	4. Taken together, even without changing the disputed allocation of staff costs, the difference for 2018/19 amounts to a total of around £80,000, enough to convert the alleged loss into a break-even. This result has been achieved despite the fact that the revenues of the Trust have been adversely affected since the decision to proceed with the Mastcraft deal was confirmed by the Council. Several regular users, including some of those noted in the SW report, were told by the Council Halls Booking section as early as 2016 that no long-term reservations were being accepted. We understand these users sought alternative space elsewhere although in fact the Halls remained open for longer than had been predicted, which inevitably meant a fall in utilisation. As well as having an impact on Trust revenues for the past three years, these figures have also influenced some of the elements of the SW valuation.
2. **Independent valuation**
	1. We note the scope of the property valuation provided by SW. However, we are concerned that the consultants, Sanderson Weatherall, were instructed by officers from the same department in Ealing Council which is responsible for negotiation and disposal of Trust assets to Mastcraft. There was no prior reference to preparation of the valuation with the Trustee body. Moreover, there is no explanation of the assumptions that underpin the report, neither is there any reference to any discussions that took place between the Council officers and SW prior to the report’s finalisation. This may be why the report suffers from two major drawbacks. First, the brief it was given and the scope of its study are deficient. Second, it has had to rely on the sometimes inaccurate information provided by the Council. We deal with these two issues below.
	2. **Scope of the valuation.** The brief given to SW is in two parts. Part 1 provides data as part of the application on behalf of the Trust to the Charity Commission for approval of the proposed asset swap of the Princes Hall and Queens Hall. The second relates to the Victoria Hall, and it is not clear why this has been included. The statement that “refurbishment and maintenance cost estimate of Victoria Hall will be used as a ‘high-level’ indicative estimate and form part of Charity Commissions wider consideration of the proposed transaction” is particularly opaque. However, as it was included, it is the more surprising that no valuation was requested of the Hall as a whole or of the potential loss to the Trust by reason of the demolition of the eastern end of the Victoria Hall which is part of the approved planning application by Mastcraft. This would include its ancillary spaces to the north-east, which together represent a significant proportion of the Trust’s property, measuring 154 m². Their loss would have an adverse impact on the usefulness of the Victoria Hall to the public, particularly for events involving stage performances, and therefore its revenue. No benefit whatsoever would accrue to the Trust or its intended beneficiaries from the demolition.
	3. **Data provided by the Council.** This falls into two parts: information on the extent of the Trust property, and the financial records.
		1. Extent of Trust property. While SW have had access to plans contained in the Mastcraft planning application, they have apparently been given no earlier documents, which as we show above give a very different picture. We find it difficult to understand how accurate measurements can be made of any space without the guidance of correct plans to show the extent of the area. This has affected the conclusions in the valuation report.
		2. First, in para 3.6.2, SW repeat the assertion that the Halls are “fully integrated within the wider Town Hall building and wholly reliant on its wider facilities and public access. Accordingly, there are no reserved rights of way that associate with the three halls”. This statement originates from the Council, which has told the Charity Commission that the Halls are “landlocked” because they were built as an integral part of the Town Hall with restricted independent access (Charity Commission letter 15 July 2019). This is contradicted by the history of the building as noted above (section 4), and by SW itself where elsewhere (their para 3.2.2) it says that there is “a main entrance [to the Trust property] within the western elevation and a further entrance within the northern elevation, both entrances serving the upper floor level”. Further, the issue of whether the Trust has a right of access through the Town Hall main entrance has not been examined. We believe such a right has been established through custom and practice over the past 130 years, either by wayleave or easement. The Trustees should not allow this possible right to lapse unexplored or, if extinguished, without compensation.
		3. Second, it is also claimed by the Council that “most of the ancillary facilities [the Hall] needs (kitchens, storage, bar area, cloakroom, toilets etc) sit within the Council’s (statutory) footprint, so it could not function as a ‘stand alone’ facility”. Again, the history of the property shows that from the early years the Trustees extended the Trust building to provide exactly these services. Most of these remain within the Trust areas, though some (such as those serving the Victoria Hall artists’ rooms, the Princes Hall kitchen area and the toilets) are in need of renewal or refurbishment. Some of the spaces have been absorbed into other areas but could and should be reclaimed.
		4. **Financial data**. As noted above (para 5.3), we have also queried the accuracy of the accounts on which some of the valuation assumptions have been based. It is particularly surprising that SW has been given seven years profit and loss data for the Trust from 2012/13 to 2018/19 which has not been provided to the Trustees. Further information contained in Appendix IV of their report is particularly unhelpful, containing as it does data for the Greenford Hall, Queens Hall and other Town Hall spaces. This information has apparently been relied on to produce the conclusions on operating costs in the SW report para 3.7.6.
		5. It is not within the scope of this submission to recast these figures and their impact on the valuations given, but it is sufficient to say that the errors all contribute to a reduction in the value of the Trust property, and in particular affect the comparison between the Princes Hall and the Queens Hall.
		6. A key section of the valuation report is 6.3, Proposed Transaction Appraisal**,** which sets out a number of financial, operational and amenity benefits which it is suggested will benefit the Trust under the proposal. These are inevitably more subjective than the financial appraisal of the Trust spaces, and we believe need to be questioned, as below. The assertions are:
			1. *The scheme will safeguard future community uses through the Community Use Protocol.* This is true only to a limited extent, as the associated lease covenant on price increases is time limited to ten years. After this period the space effectively becomes an integrated part of a commercial hotel operation.
			2. *There will be improved communal areas and wider range of facilities available to the public through the redeveloped Town Hall.* Provision of a bistro, cocktail bar and roof terrace are commercial offerings which are not benefits relevant to the Trust’s objectives.
			3. *The Trust will obtain a receipt by way of a properly apportioned share of rent and premium payments under the proposed activities lease.* The objects of the Trust are not to make money, but to provide facilities for hire by the local public. The value of the receipt is also in question.
			4. *The Trust will relinquish repair and maintenance obligations for Victoria Hall and its substitute accommodation.* It can only do so by losing control of the principal asset through which its primary Object can be delivered. A properly operated Trust should, as originally intended, provide for maintenance out of its own operating revenues.
			5. *The Trust has no funds or realistic ability to raise funds, being dependent on the Council for funding.* This is not a benefit, but a statement of the present way in which the Trust is constituted. It can be corrected by altering the constitution of the Trust, as examined below.
			6. *The Trust will gain a measure of protection by way of the proposed grant of an under-lease of the Victoria Hall, and a sub-underlease of the Queens Hall*. This offers less protection than the continuation of the present arrangement whereby the Trust holds a deemed head lease on all its property. If this is of concern, better ways to regularise the position can be pursued.
3. **Alternative courses of action**
	1. Paragraph 4.14 of the Report summarises options available to the Trust. Some of these (but not all) are then examined in more detail. Unfortunately the authors of the Report have not clearly separated arguments based on the needs of the Council as the body responsible for the Town Hall from those of the Trust, and makes its recommendations from the viewpoint that the Mastcraft deal (‘opting in’) as presently constituted is the only viable solution for an assured future for the Town Hall. It also repeats (4.15) the incorrect assertions that

	(a) the Trust property is fully integrated into the Town Hall itself, and
	(b) the Trust is wholly financially dependent on the Council to operate.
	2. The report also suggests (para 4.15) that Mastcraft would “more than likely” not proceed with redevelopment of the Town Hall were the Trust not to participate in the scheme, and that in those circumstances the Council might consider “options for an outright sale of the Town Hall, potentially with no requirement for ongoing community use”. This apparent threat constitutes both an improper and “irrelevant” consideration for the Trustees to consider, and is contrary to the known position of Mastcraft. In statements at two public meetings in July 2018Mastcraft’s Director Mr Sanger said the company would be prepared to deal with the Council on alternative arrangements should the Charity Commission rule against including the Trust areas in their development. This alternative approach has never been investigated by Council officers advising the Trust. The fact that this might involve reopening bids for the Town Hall is also an irrelevant consideration for the Trust.
	3. The detailed arguments in the Report supporting an “opting in” approach (Report 4.16 onwards) are therefore not ones you should consider. However, as the Council has arbitrarily and without consultation with the Trust unilaterally decided to stop taking bookings for the Halls and in effect to close them, the Trust cannot fulfil its Objects and the option to continue “as is” (Report 4.15) is no longer a realistic possibility.
	4. It is also not appropriate to suggest that the Trust itself should seek to alter the deal with Mastcraft (option 3). Just as it is not the business of the Council to interfere with the running of the Trust, it is not the business of the Trustees to opine on how the Council as statutory authority should manage the areas the Town Hall which lie outside the Trust boundaries. Option 4 (abandon the whole Mastcraft proposal) is not therefore one which it is for the Trustees to discuss.
	5. This leaves Option 5 (to explore other arrangements such as partnership with another charity or other changes to the charity’s status). There are precedents for this solution, which are noted in para 3.2 above. The Pitzhanger Manor model has proved particularly successful, both financially and in the interests of the Trust’s intended beneficiaries, while the Council as statutory authority has been relieved of any responsibility for managing the Trust property and the liabilities outlined in Report 4.29 and 4.30.
	6. In the light of these precedents, it is unreasonable to reject this option on the grounds set out in Report 4.33 to 4.35, which has been done solely following a limited examination by Officers in Regeneration who themselves had a conflict of interest because of their commitment to the Mastcraft solution. The problems recognised in Report 4.36 are being forced on the Trust irrespective of its own decisions. While Trustees may correctly consider whether this Option can produce a “self-sustaining financial position”, it is incumbent on them to give it much fuller consideration than has been the case so far. In this context, it is relevant to note that EPAC, the charity behind the CEPAC proposal, already has promissory notes for loan finance in excess of £100,000 as “seed corn” to begin the necessary steps to implement its proposed scheme.
	7. We therefore propose that officers should be directed not to proceed with any arrangements to dispose of any part of the Trust property, but to investigate further the option 5 contained in the Report 4.14, ie to consider an alternative arrangement for altering the charity’s status including partnership with or transfer to another charity, to allow the Trust more flexibility in fund raising and operation.

Submission to GPC, 23 Sept 2019