

**18 December 2014**

## **BRENTWOOD ASSIZE HOUSE**

### **Review of Governance and Administration of Brentwood Assize House**

**Report of:** *Christopher Potter – Monitoring Officer and Head of Support Services*

**Wards Affected:** *All*

**This report is:** *Public*

#### **1. Executive Summary**

- 1.1 Brentwood Assize House ('the Charity') (Charity Number 230138) is a small charity under the terms of the Charities Act 2011.
- 1.2 The purpose of this report is to review the governance and administration of the Charity.

#### **2. Recommendation(s)**

- 2.1 That the current governance structure be noted.
- 2.2 That the costs of the administration of the Charity be quantified, separately accounted for and a review of its future administration needs for 2015/16 be undertaken.

#### **3. Introduction and Background**

- 3.1 The Charity Commission is the independent regulator of charities in England and Wales.
- 3.2 As the Assize House is a charity which is registered with the Charity Commission, it is regulated by the Charity Commission.
- 3.3 A charity has a legal structure which is defined by its 'governing document' which, as the Charity Commission states, is 'the legal document that creates the charity and says how it should be run'.
- 3.4 Brentwood Assize House is governed through the structure of a trust.

- 3.5 Trustees are responsible for the charity to which they are appointed.
- 3.6 Currently all 37 councillors serving on Brentwood Borough Council are trustees by virtue of comprising together the Council.
- 3.7 Administrative support is provided by Brentwood Borough Council including time by officers employed by Brentwood Borough Council.
- 3.8 The present demarcation lines do not sufficiently make clear that the Charity is a separate legal entity which is entirely responsible for itself.

#### **4 Issue, Options and Analysis of Options**

##### *Charity Structure*

- 4.1 There are, in the view of the Charity Commission, four main types of charity structure: (1) trust (2) unincorporated association (3) charitable company (limited by guarantee) and (4) charitable incorporated organisation (CIO).
- 4.2 Where a charity is 'unlikely to employ a significant number of staff or carry on any kind of business', but 'makes grants but doesn't do any other type of work', the Charity Commission suggests the appropriate form of charity structure is the 'trust'.
- 4.3 Therefore, the existing form of charity structure is recommended to be retained.

##### *Trustees*

- 4.4 Turning now to the question of trustees, the authority to act as trustees of the Charity and to administer the endowment was conferred on the then Urban District Council of Brentwood by the Charity Commission under a deed dated 11 December 1928.
- 4.5 On 1 April 1974 Brentwood Borough Council was formed and took over the responsibilities of the defunct Urban District Council of Brentwood including the separate and independent trustee role.
- 4.6 It must be fully understood that the role and responsibilities of trustee is completely separate from the role of a Brentwood Borough Councillor (even though Councillors are the trustees).

- 4.7 The conflict of interests must be managed. A trustee must by law only act in the interests of the charity for which they are trustee, and in contrast a Brentwood Borough Councillor must serve the interests of the Council as a whole.
- 4.8 As the Charity Commission states: 'Trustees make sure the charity is running well and is doing what it was set up to do. This includes ensuring the charity:
- has the money it needs
  - spends its money sensibly, on the activities it was raised for
  - follows the law, including preparing reports and accounts to be sent to the Charity Commission
  - doesn't break the rules in its governing document (its constitution, trust deed or articles'.
- 4.9 The Charity Commission also adds: 'Trustees of smaller charities might take on all or most of the work of running the charity'.

*Administrative support and costs*

- 4.10 Administrative support needs to be made available to the Charity and the issue is what support, who and at what cost to the Charity.
- 4.11 Such administrative support includes the preparation of grant application forms, their distribution, and administration of submitted grant applications. It also includes the preparation, holding of meetings of the Charity, and subsequent follow-up work including minute preparation and distribution. Indeed the Charity's wider secretarial role and financial role must be undertaken.
- 4.12 There are obviously costs associated with doing so (including the cost of hire of any venue for meetings and office equipment etc. such as a computer, printer etc).
- 4.13 Should Brentwood Borough Council wish to continue to support the Charity, then the arrangements between the Charity and the Council must be more open and transparent, recognising the Charity's independence and the requirement to stand on its own feet.
- 4.14 An option might be for Brentwood Borough Council to give an annual grant to the Charity such as to cover the cost to the public purse of public

resources if such resources are to be used. If so, the Charity will need to make an application for such public funding.

- 4.15 Another option might be for the Charity to make its own arrangements with individuals giving their time freely and without payment rather than applying for a grant to Brentwood Borough Council. But other administrative costs would still remain which would be a drain on the Charity's resources.
- 4.16 Whatever option the Trustees might wish to pursue, the cost of such administrative support needs to be quantified and then the matter be further reviewed with the benefit of such information.
- 4.17 Detailed guidance is available on the Charity Commission's website - <https://www.gov.uk/government/organisations/charity-commission>
- 4.18 The Charity Commission is currently holding a public consultation (ending at 5pm on 17 February 2015) on its guidance 'The essential trustee (CC3): new version' which moves away from drawing a distinction between legal requirements and good practice. It sets out what the Charity Commission expects of trustees.

## **5 Reasons for Recommendation**

- 5.1 To be aware of its structural and operating arrangements.

## **6 References to Charity's Purposes**

- 6.1 The Charity's objectives are for the general improvement of the Borough. This is consistent with Brentwood Borough Council's 'Street Scene and Environment', 'Housing, Health and Wellbeing' and 'A Safe Borough' priorities.

## **7 Implications**

### **Financial Implications**

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- 7.1 At the end of the financial year 2013/14 the Charity had £189,054 of available cash at its disposal and regular rental income of £2,000 a year.
- 7.2 In addition to this the Charity has two investment properties valued at a total of £237,500.

**Legal Implications**

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- 7.3 Trustees are reminded that in law they are required to act in the best interests of the Trust.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 7.4 None

- 8 Background Papers** (include their location and identify whether any are exempt or protected by copyright)

- 8.1 None

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