

## **Divisions Affected – Watlington and Chalgrove**

### **CHARLOTTE COXE TRUST COMMITTEE**

**22 August 2024**

## **33 HIGH STREET, WATLINGTON LIBRARY, AND THE TRANSFER OF TRUSTEESHIP OF THE CHARLOTTE COXE TRUST TO WATLINGTON PARISH COUNCIL**

### **Report by Director of Law and Governance**

#### **RECOMMENDATIONS**

1. **The Committee is RECOMMENDED:**
  - (a) **To resolve to enter into a year long tenancy of 33 High Street starting on 1 September 2024 with a named local sponsor which will stipulate that the property is to be occupied by Ukranian refugees and to delegate authority to the Director of Law and Governance and Monitoring Officer to negotiate and conclude the terms of the lease in consultation with the Director of Property and Assets;**
  - (b) **To resolve that it would be in the best interests of the Trust for trusteeship to remain with the Council rather than to have the Trust's property assets transferred to a "custodian trustee" and have individuals appointed as trustees; and**
  - (c) **Assuming the recommendation at (b) is accepted, to authorise entering into a formal Memorandum of Understanding with the County Council regarding the library service's occupation of Watlington Library.**

#### **Executive Summary**

2. 33 High Street, Watlington  
New energy efficient storage heaters were installed at the property in May 2024 at a cost of £9,336. These improved its Energy Performance Certificate status from F to E, enabling it to be let out formally.
3. The Council has always been cautious to enter tenancies of the property directly with occupying members of the public, as there is uncertainty over whether this could inadvertently create a Secure Tenancy under the Housing Act 1985. The Council is unable to let properties on Assured Shorthold Tenancies.

4. The original plan had been for the Council to let the property to Watlington Parish Council (WPC), with it then managing the occupation of the property. WPC has decided it does not wish to take on this responsibility.
5. A local sponsor has been very generous in funding the renovation of the property and is closely involved with the Watlington Welcome refugee project. They have offered to take a tenancy from the Council, with Watlington Welcome then managing the occupation of the property.
6. To create a Secure Tenancy the tenant has to occupy the property and as the local sponsor referred to above will not occupy the property (and indeed has no interest in becoming a Secure Tenant), officers consider the risk of creating a Secure Tenancy inadvertently is almost non-existent.
7. The proposed tenancy to the sponsor would be for a year starting on 1 September 2024 at a peppercorn rent. It would contain the usual obligations on the tenant to maintain the property and not to carry out alterations without the Council's consent along with a requirement that it should be occupied solely by Ukrainian refugees. The tenancy could be terminated in the event of any breach.

#### Transfer of the Trust to Watlington Parish Council

8. Watlington Parish Council (WPC) has now indicated that it would not be willing to replace the Council as trustee of the Trust. All it is willing to do is to act as a "Custodian Trustee" of the property assets in the Trust. The Official Custodian for Charities is willing to provide a similar service – it simply involves holding the trust's property assets (ie being a name on the title), but without assuming any responsibility for management or liability in the event of mismanagement. The new trustees would have to be members of the public. It has been further suggested by WPC that the new trustees would want to be protected by being members of a Charitable Incorporated Organisation, which would mean that they did not have personal liability to the Trust for their acts and omissions. No names have been put forward yet.
9. Having a permanent body as trustee gives continuity and security to the trust. The Council has unlimited liability for its acts and omissions, and has its own staff, resources and internal scrutiny. The fact the Council has continuously acted as trustee since 1949 speaks for itself. However committed they are, members of the public on their own could not give the same kind of continuity and stability. Members of the public have to juggle other priorities in their lives, may move away or lose capacity, and eventually die and have to be replaced. An excellent initial set of trustees might be replaced by an unsatisfactory second set or indeed not even replaced at all, if none could be found. The Council has a duty to the Trust to ensure that any replacement trustees can provide equivalent continuity and security to that it provides and officers do not consider members of the public to be able to do that.
10. WPC has requested that if the trusteeship remains with the Council, it should be able to nominate members of the Committee. Such a proposal would need approval of Full Council, but officers recommend that the request should not be referred to Full Council at this stage. The views of local residents are taken

seriously by the members of the Committee. Members of the public are entitled to attend meetings and address the Committee, as well as liaising privately with members if there are issues of concern to them. It is difficult to see that external nominees would bring significant benefit to the work of the Committee. The matter can, of course, be kept under review.

### Library

11. At its meeting on 4 November 2022, the Committee approved the transfer of the Trust assets to WPC subject to a lease back of Watlington Library to the Council. The key terms of the lease (apart from it being “rent free”) were that it should:
  - (a) Demise all the current space occupied by the library;
  - (b) Include 4 parking spaces to the rear (1 of which is suitable for disabled access);
  - (c) Limit usage to a library (with a broad understanding of “library” along the lines of it being “a collection of books and digital information resources made available for the general public along with space for users to sit and multi-functional space for non-commercial exhibitions, public meetings, educational and cultural activities to take place”);
  - (d) Have a term of 60 years from its completion date;
  - (e) Be terminable by the landlord on 12 months’ notice at any time once 40 years of the term had elapsed and be terminable by the tenant on 12 months’ notice at any time;
  - (f) Permit alterations and additions (including structural ones) subject to the landlord’s reasonable consent (which may not unreasonably be withheld); and
  - (g) Make the tenant responsible for maintaining the interior of the library, but make the landlord responsible for the repair and insurance of the main structure of the building (subject to the tenant contributing an appropriate service charge based on the space within the building that the tenant occupied).
12. If members accept the recommendation not to proceed with the transfer of the Trust to Watlington Parish Council at paragraph 1(b) above, the Council in its capacity as the responsible authority for library provision will continue to occupy a trust asset without agreement in place as to the basis of the occupation. The Council as trustee cannot grant a lease to itself.
13. Officers consider that the best solution would be for there to be a Memorandum of Understanding drawn up and signed by the Chair of the Committee (on behalf of the Trust) and the Service Manager for Libraries and Heritage (on behalf of the County Council’s library service) setting out that the terms of the library service’s continued occupation of the library, which will be in line with those detailed at paragraph 11 above.

## **Financial Implications**

14. The proposed Memorandum of Understanding between the Trust and the Library Service would involve the Council (in its capacity as library authority) committing itself to pay a service charge relating to the Library’s shared occupation of the building at 33-35 High Street, Watlington. Fair sharing of expenses is normal for any premises the Council occupies.

15. As the Trust's funds are separate from the Council's own funds this report otherwise has no direct financial implications for the Council.

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## Legal Implications

16. Letting 33 High Street to a named local sponsor with a lease requiring it to be occupied solely by Ukrainian refugees is an effective way of ensuring a Secure Tenancy is not inadvertently created.
17. The Council does have a fiduciary duty to the Trust to ensure that any arrangement for replacing it as trustee protects the Trust's interests. It is for the Committee to come to a decision as to whether members of the public acting as trustees could provide the security and continuity that a statutory body like the Council provides.
18. The Council in its capacity as Trustee cannot grant a lease to itself in its capacity as library authority. Any lease drawn up which purported to do this would be invalid. A Memorandum of Understanding would help formalise the arrangement and should be legally enforceable in the event of any future dispute.

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## Staff Implications

19. Retaining responsibility for the Trust will mean the Council's staff have an ongoing role with the management of the Trust. Staff involved include those in finance, legal services and estates. A charge can be made to the Trust for their time. The oversight of their work and review of charging will rest with the Committee.

## Equality & Inclusion Implications

20. The library provides a community hub and, as well as providing a traditional book lending service, also contains public access computers, enabling those without computers at home to access the internet. Entering a Memorandum of Understanding between the Trust and the Library Service will help protect the Library's long-term presence in Watlington.
21. Ensuring 33 High Street is occupied for another year to Ukrainian refugees is consistent with the Council's policy of providing support to those affected by the war in Ukraine.

## **Sustainability Implications**

22. The work done to 33 High Street in May to bring it up to an energy efficiency standard acceptable for letting will ensure energy consumption in future is lower than is has been to date.

## **Risk Management**

23. The efforts detailed above to avoid creating a Secure Tenancy and to retain trusteeship in order to provide long-term stability for the Trust reflect the Council's cautious approach to risk in connection with the Trust.

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