

CONSTITUTION COMMITTEE: 25 NOVEMBER 2022**CHARITABLE TRUST FUTURE ARRANGEMENTS****REPORT OF DIRECTOR OF LAW AND GOVERNANCE****Purpose of Report**

1. The purpose of this report is to update the Committee (sitting as Trustee) on the proposals for the future arrangements for the Educational Trusts of which the County Council is the sole corporate Trustee into a single fund called the Leicestershire Educational Trust Fund to be administered by the Leicestershire and Rutland Community Foundation (LRCF) and to seek the Committee's views (1) in relation to the proposed closure and transfer of funds referred in paragraph 11 below; and (2) in relation to the potential transfer of the Kibworth Beauchamp High School Foundation to a community group.

Policy Framework and Previous Decisions

2. Part 3 of the County Council's Constitution provides for the Constitution Committee to undertake those functions relating to the Council's role as a charitable trustee. The Committee resolved at its meeting in September 2020 to approve the principle of the transfer of certain of its educational trusts to the Leicestershire and Rutland Community Foundation.

Background

3. The County Council is the sole corporate Trustee of various Educational Trusts which have not been subject to a review for a significant period and the interest from the funds has accumulated over the years. Many of the Trusts are relatively small and the Trust objectives are difficult or impossible to apply in a modern educational context. Engagement took place with the LRCF as part of a scheme supported by the Charity Commission to reactivate inactive Trusts for the benefit of the community. This coincided with approaches from the Charity Commission seeking the Council's proposals for the Trusts.
4. LRCF is a charity which helps local individuals and companies to give money, in a tax efficient way, directly to local needs. It offers a structure under which community, trust and donor funds are invested and managed in a consolidated fund. It currently manages significant endowment funds on behalf of various charitable trusts and national grant programmes. The benefits of the transfer are as follows:
 - a. The active management of the Trusts and making grant awards would support the community and be in keeping with the wishes of the donors;
 - b. The administration of the Trusts at present is achieved through the internal services and via professional support from Corporate Resources and the Chief Executive's Department. The resource involved in maintaining the Trusts is not

significant but if the Trusts are to be actively managed this would require additional resourcing;

- c. It meets the objectives of the Charity Commission trust revitalisation initiative;
- d. LRCF is an accredited member of the UK Foundation Network and is experienced in managing educational trusts elsewhere, such as for Leicester City Council, and offers a resilient approach;
- e. Members retain involvement through receipt of an annual report on grant giving and the operation of the Trust; and
- f. It is consistent with the advice to Local Authorities from the Charity Commission to review and consolidate small funds.

Leicestershire Educational Trust Fund- (Tranche 1)

5. The Committee has approved the closure of the Trusts within tranche 1 and the transfer of the funds into a fund to be administered by the LRCF combined into a single fund called the Leicestershire Educational Trust Fund, subject to developing qualifying criteria for the Trusts. The trusts within Tranche 1 are listed as Appendix A to this report. .
6. The draft Deed of Agreement to give effect to the transfer has now been negotiated with LRCF and is almost ready for execution. It provides for the objects of the Leicestershire Educational Trust Fund to be to assist, as the first priority, schools within Leicestershire, in supporting vulnerable students who, for reasons of poverty or other disadvantage, need additional support for equipment, additional training, books, trips or other provision to enhance their education and future opportunities, including help moving into apprenticeships or further education after school and employment.
7. The Deed provides for a grant giving process whereby there is open access to the Fund during Quarter two of each year, via an open Portal or online access point on the LRCF's website and in accordance with any agreed Fund publicity initiatives agreed with the County Council. The portal and publicity will set out the criteria for applying to the fund and guidance notes for applicants. Access will remain open for at least six weeks but if the Fund is significantly oversubscribed, the LRCF may close the Portal earlier provided that notice is given to the council and reasonable notice is given to applicants to enable them to submit applications.
8. The final say on how the fund is applied rests with the LRCF. The LRCF will update the Council annually in the first five years following the date of the agreement to help identify beneficiaries and the Council may direct prospective beneficiaries meeting the Fund's eligibility requirements to the LRCF and/or the Portal or online access point. In Quarter three every year, the LRCF will provide to the Council a report of the grants made from the Fund, together with written confirmation that all of the grants have been awarded in accordance with the Fund's objects. An audited financial statement will also be provided.

9. The LRCF will invite the Council to a meeting every three years, the purpose of which is to discuss and review the objects of the fund and consider whether these remain fit for purpose and shall invite views from the Council on this. No amendments may be made without Council's approval.

10. The agreement provides for the transfer of the cumulative funds as follows:

Total capital value of the Trust Funds as at 31.3.22	£209,569
Total value of the revenue held by the Authority in respect of the Trust Funds as at 31.3.22	£114,676

11. The total revenue figure is higher than had been initially anticipated and therefore discussions have taken place with LRCF and the Charities Commission to confirm that there is no objection to this being reinvested and added to the capital fund to be applied in accordance with the fund's objects. The Commission have confirmed that they are agreeable to this so long as the Trustees are satisfied that this would be in the best interests of the fund. The benefit of such an arrangement will be to avoid a large dissipation of the revenue in year 1 and to allow a bigger capital fund and annual return for grant making. This is believed to be in the interests of the community who will eventually access the funds and is particularly relevant in light of the cost of living crisis. The trustees are recommended to agree to this proposal.

Tranche 2 - the remaining funds

12. As well as the fund referred to above, there are a number of other smaller funds and funds with unique features which it is proposed be managed in a different way depending on the individual circumstances as follows:

The Mary Smith Scholarship Fund

13. The purpose of this fund, which is a permanent endowment (therefore only allowing income to be expended not capital), is to give financial assistance for students of Ashby-de-la-Zouch Grammar or Ivanhoe Secondary School who are residents of Ashby-de-la-Zouch to help them pursue a trade or profession or travel abroad for their education. The value of the fund is around £117,000. There are some anomalies in relation to the historic governance of the Trust and this is likely to require further specialist legal advice to resolve. It is proposed to engage with the school to either transfer the fund to the Governing Body of the school (which will require the approval of the Charity Commission) or if this is not permitted by the Commission to replace the Council as Trustee with representative governors.

Willis Memorial Scholarship

14. The purpose of this fund is to provide scholarships for purpose of enabling pupils of Dixie Grammar school to participate in foreign travel. The value of the funds is around £7,700 capital and £5,400 revenue. Liaison has taken place with the Dixie Grammar School and the school is willing to receive the fund and

add this to their own existing charitable fund for the benefit of their students. Subject to compliance with any Charity Commission requirements, it is proposed to close the trust and transfer the funds to the Dixie Grammar school to be added to the schools existing trust.

Minnie Burman Trust Fund

15. The purpose of the Fund is to award each year of a prize or prizes to a pupil or pupils of Dunton Bassett County Primary School. The value of the combined capital and income is around £9,100. Subject to compliance with any Charity Commission requirements, it is proposed to close the trust and transfer the funds to the Dunton Bassett Primary School for the governing body to administer for the benefit of pupils at the school.

The Piercy Scholarship Fund and Thompson Trust

16. The purpose of this fund is to assist students who have attended Loughborough schools in their education in Electrical Engineering and in exhibitions. The funds values are around £58,000 and £66,000 capital and revenue combined respectively. Some discussions have taken place with the Clerk to the Governing Body of Loughborough college who have asserted that these funds should be transferred to the college but it is not clear if the college has a suitable existing trust to act as the vehicle to the transfer. It is proposed to treat this trust in the same way as Mary Smith Trust referred to in paragraph 13 above and to obtain further specialist legal advice with a view to either transferring the fund to the Governing Body of the College (which will require the approval of the Charity Commission) or if this is not achievable to add this to the LRCF fund.

Fullhurst Community College Prize Fund

17. Fullhurst Community college is a school within the area of Leicester city and so it would not be appropriate to include the fund in the LRCF. The value of the fund is around £3,000 capital and revenue combined and it is proposed to close the trust and transfer the fund balance to the governing body of the school to use for the benefit of their students.

John Cleveland College Education Enhancement Trust

18. The previous report to the Trustees included reference to the John Cleveland College Education Enhancement Trust. Upon further investigation, it has been established that the governing body of John Cleveland College were named as trustees of this fund, and this particular trust was dissolved in 2012. Notwithstanding this, the Council continues to hold around a total of around £33,000 invested in two separate funds (known as Hinckley Upper Prize and JCC Scholarship) that appear to have connection to the John Cleveland College. Correspondence has been received by Legal Services from the Hinckley (JCC) Foundation requesting release to it of the aforementioned funds. Subject to undertaking checks with (i) the Hinckley (JCC) Foundation

seeking confirmation of whether the funds held by the Council belong to it (ii) the John Cleveland College as to its views on the release of these funds to the Hinckley (JCC) Foundation, and (iii) any proposed transfers being approved by the Charity Commission, it is proposed that the two funds are closed and the fund is transferred to the Hinckley (JCC) Foundation.

Kibworth Beauchamp High School Foundation

19. This is a larger fund comprising a significant Capital holding and land.
20. The objects of the charity are to advance the education (including social and physical training) of the beneficiaries through:
- a. *the provision of items, services, facilities and special benefits of any kind not required to be provided by the local education authority for the benefit of the school;*
 - b. *awarding scholarships exhibitions bursaries maintenance allowances or grants tenable at any school, university, college of education or other institution of further (including professional and technical) education approved for the purposes by the trustee;*
 - c. *the provision of financial assistance, outfits, clothing, tools, instruments or books to assist them to pursue their education (including the study of music and other arts) to undertake travel in furtherance thereof, or to prepare for or enter a profession, trade, occupation or service on leaving school, university or other educational establishment;*
 - d. *retaining the land identified in the scheme as a site for the school.*
21. The Scheme was amended in 2011 to allow the Charity to continue to support Kibworth High School after its conversion to academy status and renaming as Kibworth Mead Academy.
22. The value of the trust fund is circa £350,000 made up as follows:

	£
Market value of the original endowment (original endowment £4,306)	33,000
Value of other land sales	293,000
Revenue	24,000
Total	350,000

23. In addition, the trust has agricultural land holding the notional value of which is approximately £1M and land currently let as a playing field and school site as shown on the map attached as Appendix B as follows:

Title	Description of property	Proprietor	Status
Freehold LT435715	Two parcels of land on the south west side of Wistow Road, Kibworth. [THE OFFICIAL CUSTODIAN FOR CHARITIES on behalf of Leicestershire County Council As Trustees Of The Kibworth Beauchamp High School Foundation	let subject to three separate agricultural tenancies
Freehold LT435711	Land on the west side of Kibworth Road, Fleckney.	THE OFFICIAL CUSTODIAN FOR CHARITIES on behalf of Leicestershire County Council As Trustees Of The Kibworth Beauchamp High School	let subject to an agricultural tenancy
Freehold LT435564	Land on the south east side of Barnards Way, Kibworth Harcourt (Kibworth Primary School Playing Field)	THE OFFICIAL CUSTODIAN FOR CHARITIES on behalf of Leicestershire County Council As Trustees Of The Kibworth Beauchamp High School	Subject to a lease of the land lying to the south of Hillcrest Avenue, Kibworth Harcourt 21-year lease from 1 July 2012 of recreational playing field . Lease granted to DISCOVERY SCHOOLS ACADEMIES TRUST The Lease prohibits assignment, underletting of the whole or part. RPI rent review on every 3 rd anniversary of the term.
Freehold LT436516	Kibworth High School, Smeeton Road,	THE OFFICIAL CUSTODIAN FOR CHARITIES on behalf	Subject to a lease of 125 years to Kibworth High

	Kibworth (LE8 0LG).	of Leicestershire County Council As Trustees Of The Kibworth Beauchamp High School	School Technology Community College (now the Mead Educational Trust) . Subject to various restrictions on disposal and underletting etc Leasehold LT441696
Freehold LT435595	Land on the west side of Gumley Road, Smeeton Westerby.	THE OFFICIAL CUSTODIAN FOR CHARITIES on behalf of Leicestershire County Council As Trustees Of The Kibworth Beauchamp High School Foundation	let subject to an agricultural tenancy

24. The Scheme does not allow the Trustee to make any amendment and there is therefore a requirement for the Trustee to apply to the Charity Commission if there are to be any amendments to the scheme as the charity contains a permanent endowment.
25. It is understood that members of the community wish to be considered as trustees in place of the County Council. Preliminary external legal advice has been taken on this and this recommends that as a starting point any prospective candidates seeking appointment as trustee should firstly be made aware of rules and requirements around conflicts of interest and to avoid placing themselves in situations where their duties and obligations as trustee could conflict with other duties and interests they may hold.
26. Subject to the Council as trustee being satisfied that the particular trustee(s) appointments proposed would not give rise to any conflict of interests, as outlined above, the Council would need to apply to the Charity Commission for permission to amend the Scheme to include:
- (i) provisions allowing for the appointment of additional trustees (in addition to LCC, which is currently the sole trustee);

(ii) provisions regulating trustee meetings, including quorum requirements as well as arrangements for trustee meetings

(iii) provisions barring a trustee from exercising any voting or decision making in circumstances where their involvement would give rise to a conflict of interest as well as

(iv) provisions prohibiting distributions or payments to trustees or connected parties.

27. Subject to the above, once the Charity Commission has made an amending Scheme to include all of the provisions where the charity has more than one trustee, the Council as current trustee would need to follow the procedure set out in the amended scheme to appoint the additional individuals as trustee, and the Council could then, if it so wishes, retire as trustee. The Council would need to undertake appropriate due diligence processes before any retirement / transfer could be recommended. It is recommended that further legal advice be sought on this option and how this may be progressed and how the interests of third parties (such as the Trust's agricultural tenants and lessees) may be assured.
28. The alternative to replacing the County Council as trustee may be to better develop the administration of the fund so that there is more engagement with the governing body of the academy trust in relation to the income distribution in accordance with the objects referred to above

Resource Implications

29. These are contained within the report.

Recommendations

30. The Committee is recommended to:

- a) Note the progress in relation LRCF Leicestershire Educational Trust Fund and confirm that the revenue held in relation to the closing trusts may be invested into the new fund;
- b) Note the reporting arrangements in relation to the LRCF fund;
- c) Authorise the Director of Law and Governance to proceed with steps necessary to close and transfer funds listed at para 12.1-12.6 as set out in this report and to take any steps necessary to achieve this, including external specialist legal advice, if required;
- d) Note the position in relation to the Kibworth Beauchamp High School Foundation and to consider whether the trustees wish to explore the potential to transfer the trust (in whole or in part) to new trustees as outlined in para 20-22 above and if so to authorise the Director of Law and Governance to take external legal advice in relation to achieving this.

Background Papers

Report to the Constitution Committee on 29th July 2019:

<https://politics.leics.gov.uk/documents/s147457/Charitable%20Trusts%20report.pdf>

Report to the Constitution Committee 18th September 2020:

<https://politics.leics.gov.uk/documents/s155499/Constitutional%20Committee%20-%20Charitable%20Trust%20Future%20Arrangements%20Update%20002%20003.pdf>

Circulation Under the Local Issues Alert Procedure

Dr. R. K. A Feltham CC

Equality and Human Rights Implications

31. A full EHRIA is not considered necessary.

Appendices

Appendix A – Tranche 1 trusts

Appendix B Kibworth Beauchamp High School Foundation land holdings

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