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To: The Chair and Members
of the Torridge Locality
(County) Committee

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Date: 25 February 2021

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TORRIDGE LOCALITY (COUNTY) COMMITTEE

Friday, 5th March, 2021

A meeting of the Torridge Locality (County) Committee is to be held on the above date at 2.15 pm to consider the following matters. This will be a Virtual Meeting. For the joining instructions please contact the Clerk for further details on public participation.

Phil Norrey
Chief Executive

A G E N D A

PART ONE - OPEN COMMITTEE

1 Apologies for absence

2 Minutes

Minutes of the previous Committee meeting held on 8 October 2019, previously circulated.

3 Items Requiring Urgent Attention

Items which in the opinion of the Chairman should be considered at the meeting as a matter of urgency

4 Disposal of former Sutcombe School Site (Pages 1 - 6)

Report of the Head of Service for Digital Transformation and Business Support (BS/21/05), attached

5 Local Member Updates

An opportunity for Members to update the Committee on community initiatives and responses to service changes in their own division.

6 Date of the Next Meeting

21 June 2021

PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC

Nil

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Disposal of former Sutcombe School Site (“the School Site”)

Report of the Head of Service for Digital Transformation and Business Support

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendations: that the Committee approve an application to the Charity Commission as Trustees of Sutcombe School Site to make a scheme to permit the following:

1. To establish a power to sell the School Site;
2. To provide for the proceeds of sale from the School Site to be applied in the proportions set out in (a) and (b) below (or such other proportions as the Commission shall decide as appropriate) for the following purposes:
 - a. 90% in furthering the education of children attending Bradworthy Academy; and
 - b. 10% in furthering the physical, psychological, and social education of the children of Sutcombe by way of the provision of a playing field and play equipment by Sutcombe Parish Councilor for such other educational purposes as the Commission shall decide, as appropriate;
3. To provide for the resignation of Devon County Council as Trustee and for the appointment of Bradworthy Academy as Trustee or such other duly appointed Trustee, as the Commission shall decide, as appropriate; and
4. To provide for a transfer of any remaining assets of the Trust (if any) to Bradworthy Academy or such other duly appointed Trustee, as the Commission shall decide, as appropriate

1. SUMMARY

This report seeks approval from the Locality Committee to apply to the Charity Commission for a scheme to amend the failed Sutcombe Primary School Trust so as to allow the vacant Sutcombe School Site to be sold and the proceeds of sale to be used to:

1. Further the education of children attending the local school; Bradworthy Academy; and
2. Contribute towards costs incurred by the Parish Council in installing play equipment upon the adjoining playing field

Devon County Council (“DCC”) is a Trustee of the Sutcombe School Site however the charitable objectives of the Trust can no longer be fulfilled.

2. INTRODUCTION

DCC wishes to dispose of land and buildings comprising the former school site known as Sutcombe County Primary School (“**the School Site**”), which closed in July 2016

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and is no longer required by DCC for the purposes of educational provision within the local area.

The School Site was gifted to the School Board of Sutcombe (a predecessor of DCC) under a conveyance dated 21 December 1875. A playing field adjoins the School Site but is not held in trust and remains the corporate property of DCC

The use of the School Site is governed by the 1875 Conveyance which reads:

“.... the premises (are to be held) on trust for the purposes of a public elementary school under the Elementary Education Act 1870 and for no other purpose”.

As Trustee, DCC has an obligation to ensure that the School Site is managed and maintained in a condition which allows it to be used to fulfil the charitable objects. However, it is clear that the charitable objects for which the School is held can no longer be fulfilled. In essence, the Trust has failed.

3. PROPOSAL

Current Management

At the time of the decision to close Sutcombe Primary School, the school had 21 pupils on roll, pupil numbers had fallen over recent years and numbers were not forecast to improve.

Sutcombe Primary School was closed as a result of being unable to secure leadership, being unable to provide continuity and consistency in the leadership of teaching and learning, low pupil numbers and precarious future financial viability.

As the School Site is held under trust there are various restrictions which limit the potential for third parties to use the site.

The running costs of the building are met from the Closure of Buildings budget and have totalled £7,000 to date in 20/21 on utilities, rates, and the vacant property management costs with Devon Norse. In 19/20 the total cost of the building was £14,000 made up of rates, utilities, grounds maintenance and vacant property management costs. By managing the School Site as a vacant property, Devon Norse provide regular checks of the site, maintain security and prevent the site falling into disrepair by identifying and reporting issues. There is no other active management of the School Site or the buildings thereon

The proposal

Regardless of its level of use, DCC as Trustee has a duty to continue to manage the School Site and meet the charitable objects of the Trust. The closure of the School and the lack of any ongoing educational requirement for the School has led to the need to consider the options for the future of the School and whether DCC is best placed to continue as Trustee.

Without consent from the Charity Commission the School Site cannot be sold or used for any purpose other than that set out in the charitable objects of the Trust.

It is clear to see that the charitable objects of the Trust can no longer be fulfilled. Therefore DCC's proposals set out in the Recommendation above seek to ensure they comply as closely as possible with the spirit of the original gift and allow the

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Trustees to carry out the overall purpose of the Trust more effectively in the current social and economic climate. The original gift was the provision of a building for use as a school. Bradworthy Academy can provide local education provision in a more cost effective and sustainable way. The ability to use the proceeds of sale to invest in additional accommodation at Bradworthy Academy would appear to be the consistent with the overall purpose of the Trust, but not currently permitted without a scheme being made by the Charity Commission.

In addition, the Parish Council have requested 10% of the proceeds of sale to be utilised in securing and upgrading the adjoining playing field which is in the process of being transferred to the Parish Council by way of a Community Asset Transfer for use by the children of Sutcombe and the surrounding area. Again, this would appear to be consistent with the spirit of the original gift by promoting the physical education of the children of Sutcombe and surrounding areas.

It therefore follows that DCC would wish to step down as Trustee and appoint Bradworthy Academy as the new Trustee, being more appropriately placed to oversee the delivery of the charitable objects of the Trust in the future. In addition, the Academy may wish to transfer the assets of the Trust to itself (also a charity) to avoid having to administer trust assets under one or more different trusts. The Trustees would be required to administer the Trust in accordance with the terms of the scheme, which if granted, would include the provision of the contribution referred to above to the Parish Council.

For the reasons set out above, the recommendations would be in the best interests of the Trust.

4. OPTIONS/ALTERNATIVES

The following options have been considered:

- 1) **Retain the site** - There is no requirement for use of the School Site by any DCC services nor is there any requirement for the use of the School Site from the local community. Therefore DCC is unable to effectively discharge its responsibilities as Trustee. The continued vacant property monitoring responsibilities are putting significant pressure on DCC service budgets. This is clearly not sustainable. In addition, should the School Site be retained, there would be a need for more active monitoring and maintenance of the property. This represents a significant liability to Devon County Council as Trustee. In order to discharge its duty as Trustee, the cost of dealing with the maintenance issues will need to be met from Devon County Council's corporate maintenance budget, as the Trust does not have any surplus funds to cover this. This is not a financially viable option.
- 2) **Offer the site to Sutcombe Parish Council, Bradworthy Academy or other local schools** - Since the closure of the School, DCC has been liaising with the Parish Council. The aim of this was to establish whether or not there was any local appetite for taking over the School Site in place of DCC. Given the ongoing maintenance requirements and liabilities that come with taking on such a building, the Parish Council was financially not in a position to do so. DCC has also liaised with Bradworthy Academy, being the designated school for the village of Sutcombe. Whilst the Academy has no educational need for the School Site, it would benefit from being able to utilise any proceeds of sale arising as a result of the

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disposal of the School Site.ⁱ Letters of response from the Academy and the Parish Council are attached as Appendix A. Consideration has been given as to whether it would be possible to benefit other local schools with the proceeds of sale given not all of the children of Sutcombe attend Bradworthy Academy. However, this would make it very difficult to administrate the trust and utilise the funds in the most effective way.

There are no other viable alternative options.

6. FINANCIAL CONSIDERATIONS

The legal fees associated with securing consent from the Charity Commission will be covered internally. If permission is granted to sell the School Site, then DCC, as trustee, will be entitled to recover any legal and professional fees properly incurred and related to the sale prior to the proceeds being distributed to Bradworthy Academy and the Parish Council.

If DCC retains the School Site as at present, the continued building maintenance and vacant property management would place significant pressure on DCC service budgets.

7. LEGAL CONSIDERATIONS

The lawful implications/consequences of the proposed course of action have been considered in the preparation of this report of the recommendations set out above.

DCC hold the School Site upon the terms of a Trust established under the 1875 Conveyance, which has since failed following the closure of the School Site in 2016. Given the fact it is no longer viable to retain the School Site for its original purpose, the Trustees are required to apply to the Charity Commission for a scheme (known as a “cy-pres scheme”) to alter the objects of the Trust to allow the assets of the Trust to be utilised in the best interests of the beneficiaries under that Trust.

The Charity Commission will decide whether to approve the scheme as set out in the Recommendations or whether it will implement its own Scheme, as it deems fit in the circumstances, The Trustees are then required to administer the Trust in accordance with any such Scheme.

8. ENVIRONMENTAL IMPACT CONSIDERATIONS (INCLUDING CLIMATE CHANGE)

The proposal has no environmental impact.

9. EQUALITY CONSIDERATIONS

In making the recommended proposal, consideration has been made on the equality impact. The proposal would support advancement of equality by furthering the provision of education to the children in the village of Sutcombe

and surrounding area. In addition, the proposal fosters good relations within the local community.

10. RISK MANAGEMENT CONSIDERATIONS

This proposal has been assessed and all necessary actions have been taken to safeguard the Council's position.

11. PUBLIC HEALTH IMPACT

The proposal does not impact on public health.

12. CONCLUSION

As Trustee, DCC has an obligation to ensure that the School Site is managed and maintained in a condition which allows it to be used to fulfil the charitable objects. However, given that the School which occupied the School Site has now closed, it is clear that the charitable objects for which the School Site is held can no longer be fulfilled. In essence, the Trust has failed.

The Recommendations would ensure that the proceeds of the school benefit the local community which is in keeping with the spirit of the original gift and ensures that DCC fulfils its duties as Trustee. The proposal is in the best interests of the local community, who have been consulted throughout. The proposal also offers DCC value for money by avoiding future building liabilities and which would ultimately reduce funds which could be made available for the benefit of the Trust.

Rob Parkhouse
Head of Service

Cabinet Member: Councillor John Hart, Cabinet Member for Policy, Corporate, Resources and Asset Management
Local Councillor: Councillor Barry Parsons
Electoral Divisions: Holsworthy Rural

LOCAL GOVERNMENT ACT 1972: LIST OF BACKGROUND PAPERS

Appendices:

A: Consultation response from Bradworthy Primary Academy and Sutcombe Parish Council

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