

DERBYSHIRE COUNTY COUNCIL
CABINET MEMBER FOR STRATEGIC POLICY, ECONOMIC
DEVELOPMENT AND BUDGET

29 JULY 2015

Report of the Director of Legal Services

**BUXTON CRESCENT AND THERMAL SPA HERITAGE TRUST LIMITED –
APPOINTMENT OF TRUSTEE**

1. Purpose of the Report

To seek approval for the appointment of a County Council Trustee to the Buxton Crescent and Thermal Spa Heritage Trust Limited.

2. Information and Analysis

At its meeting on 20 January 2015 Cabinet considered an update report on the Buxton Crescent and Thermal Spa Project (Minute No. 34/15 refers).

The report set out the arrangements between the various parties to ensure that the project is delivered in accordance with its original aims and to an appropriate quality that recognises the importance of the heritage assets and the public access to them.

The project will, on completion, have a legal structure that consists of the two freeholders (Derbyshire County Council and High Peak Borough Council) granting a long lease (200 years) to a charitable trust - the Buxton Crescent and Thermal Spa Heritage Trust Limited (BHT). The BHT, in turn, grants a long lease to the Buxton Crescent Hotel and Thermal Spa Company Limited (BCHTS Co) which is the special purpose vehicle established by the developers both to deliver and manage the project. Finally, BCHTS Co enters into arrangements with various operators – the principal ones being an operator's agreement with the hotel and spa operator (Danubius Hotel & Spa Nyrt) and an underlease of the Pump Room with the BHT for the operation of the visitor centre.

The BHT has yet to be formally constituted, but the two Councils have been acting in a shadow capacity on its behalf in the meantime. The Memorandum and Articles of Association in order to constitute the BHT are being finalised for approval by the Heritage Lottery Fund (HLF) as is the process to appoint Trustees.

The role of the BHT is twofold:

- (a) It acts as head lessee and ensures the long term proper preservation of the Buxton Crescent and spa buildings via the enforcement of the obligations on the part of BCHTS Co (as tenant) contained within its lease from the BHT; and

(b) By virtue of its position as tenant under the underlease, it has a direct management responsibility for the visitor centre (which has a working title of the Buxton Spa Experience) based in the Pump Room and certain rooms set aside for this purpose in the Crescent. In this capacity, the BHT's trading activities in the Pump Room will be carried out by a subsidiary trading company (the Buxton Crescent and Thermal Spa Heritage Trading Company Limited) because the Trust itself does not have the powers to engage in commercial activities.

It is proposed that the Councils should each appoint a Trustee to serve on the Trust and that an invitation for people to come forward, for example from the heritage and business sectors as well as the local community, will be advertised in due course.

The role of the trustees is to have overall control over the charity and to ensure that it is doing what it was set up to do. Essentially trustees are the people who lead the charity and decide how it is run. Their role includes ensuring the charity:

- Has the money it needs to operate,
- Spends its money sensibly, on the activities it was raised for,
- Follows the law, including preparing reports and accounts to send to the Charity Commission, and in this case Companies House,
- Operates in accordance with its governing document.

Although Trustees of smaller charities might take on all or most of the work of running the charity, in large charities trustees often delegate the day to day operations to the charity's staff and senior management and it is envisaged that this is how the Trust will operate.

The Trustee role would be added to the County Council's list of appointments to outside bodies and would be subject to review annually by the Leader of the Council.

3. Financial Considerations

The Councils have agreed to provide for the Trust with a start-up fund of £100,000, to be shared equally between the Councils. Once established the Trust will be able to seek grants from external funding bodies. The Trust will also establish a trading company to run the visitor centre in the Pump Room and manage the visitor experience. The profits of the trading company will be paid to the Trust to further its work in relation to the Crescent and Thermal Spa. The start-up fund will enable the Trust to appoint a manager and small staff team to run the visitor centre and visitor experience.

4. Legal Considerations

Trustees must act solely in the interests of the charity. As the Trust is being established as a charitable company limited by guarantee all Trustees will also be directors of the company. Trustees will be indemnified by the charity against any liability they incur in their capacity as a director, provided they act responsibly, honestly and in good faith in making decisions on behalf of the charity.

5. Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property and transport considerations.

6. Key Decision

No

7. Call-in

Is it required that call-in be waived in respect of the decisions proposed in the report? No

8. Background Papers

Files held by the Director of Legal Services

9. OFFICER'S RECOMMENDATION

That the Cabinet Member nominates a County Council Trustee to serve on the Buxton Crescent and Thermal Spa Heritage Trust Limited.

JOHN McELVANEY
Director of Legal Services