

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

EDUCATION, SKILLS & WELLBEING CABINET BOARD

13th April 2023

REPORT OF HEAD OF SUPPORT SERVICES & TRANSFORMATION RHIANNON CROWHURST

MATTER FOR DECISION

WARDS AFFECTED – Aberavon, Baglan, Briton Ferry East, Briton Ferry West, Sandfields East, Sandfields West, Port Talbot, Margam & Taibach, Port Talbot, Bryn & Cwmafan, Cymmer & Glyncorwg, Gwynfi & Croeserw, Cimla and Pelenna

CHARITABLE SCHEME FOR THE DISPOSAL OF THE PROCEEDS OF THE SALE OF THE FORMER GLANAFAN COMPREHENSIVE SCHOOL SITE.

Purpose of Report

1. To obtain Member consent for an application to the Charity Commission for approval of a charitable scheme (known as a 'Cy-pres Scheme') for the disposal of the proceeds of the sale of the former Glanafan Comprehensive School site.

Executive Summary

2. Glanafan Comprehensive School was closed on 31st August 2016 as part of the Council's Strategic School Improvement Programme of school reorganisation.
3. Pupils who attended the former Glanafan Comprehensive School now receive their education at two brand new build 21st Century Schools (Ysgol Bae Baglan and Ysgol Cwm Brombil).
4. By a conveyance, dated 13th July 1891, Emily Charlotte Talbot gifted the land to Glamorgan County Council for the purpose of enabling the County Council to provide a school for technical or manual instruction as defined by the Technical Instruction Act 1889.

5. Subsequent to the closure of the former Glanafan Comprehensive School on 31st August 2016, the Council's Planning Committee approved plans for the development and alternative use of the site and on 20th January 2017, the Council's Economic and Community Regeneration Cabinet Board granted delegated authority to Head of Property and Regeneration for the disposal of the site to Coastal Housing Group.
6. Although in the ownership of the Council, the land comprising the site of the former Glanafan Comprehensive school was gifted to the former authority for the area, Glamorgan County Council, for a specific purpose and, consequent upon this, its sale carried a restriction and it is necessary to submit an application to the Charity Commission for approval of a charitable scheme for the disposal of the proceeds of the sale of the former Glanafan Comprehensive School site.
7. Members are requested to consider a proposal to use the financial benefits accrued from the sale of the former Glanafan Comprehensive school site to invest in pupils' education through improving access to the set of skills, knowledge and attitudes to enable the confident, creative and critical use of technologies and systems.
8. In particular, it is proposed to support pupils in the schools that have replaced the former Glanafan Comprehensive School, namely: Ysgol Bae Baglan and Ysgol Cwm Brombil.

Background

9. Under the Council's Strategic School Improvement Programme of school re-organisation, a proposal has been implemented which has resulted in the closure of Glanafan Comprehensive School with education provision being made for the pupils at Ysgol Bae Baglan and and Ysgol Cwm Brombil.
10. Glanafan Comprehensive School closed on 31st August 2016 and the site was subsequently declared surplus to education requirements. The Council's Planning Committee approved development plans for alternative use of the site on 10th January 2017 and on 20th January 2017, the Council's Economic and Community Regeneration Cabinet Board granted delegated authority to Head of Property and Regeneration for the disposal of the site to Coastal Housing Group. Although in the ownership of the Council, the land comprising the site of the school was gifted to the former authority for the area, Glamorgan County Council, for a specific purpose and, consequent upon this, its sale carries a restriction.
11. Members may be aware that in the 19th century it was common for local landowners to make gifts to local authorities for purposes such as

education. By a conveyance, dated 13th July 1891, Emily Charlotte Talbot gifted the land to Glamorgan County Council for the purpose of enabling the County Council to provide a school for technical or manual instruction as defined by the Technical Instruction Act 1889

12. Although no charitable trust was registered by Glamorgan County Council, the effect of conveyance of 1891 has resulted in a charitable trust being created of which the Council is the sole Trustee. As such, any mechanism for the disposal of proceeds from the sale of the site will need Charity Commission approval.
13. The Council was be able to dispose of the site under the power of Trustee subject to compliance with the provisions of the Charities Act 2011. This required that public notice of the proposed sale was be given but, provided that the sale does not take place to a person connected with the Council, Charity Commission consent was not required. Prior notice of the disposal of the site to Coastal Housing Group was given back in 2017 in accordance with the requirements.
14. Furthermore, from time to time Parliament has legislated to impose particular rules on the land given in this way with a view to protecting it and ensuring that the gift was used for the purpose intended. Some of this legislation provides for the land to revert to original donor if it is used for other purposes. The Council has been advised that this does not apply in this case.
15. The site was given for a particular purpose which makes it 'designated land'. As the site is part of the permanent endowment of the charity the proceeds of sale must be dealt with in a particular manner. Since the conveyance did not set out any rules for a charity or, indeed, powers for its trustee, the local authority has to rely on provisions in the Charities Act 2011 for the power to invest the proceeds of sale and apply the resulting income for charitable purposes.
16. As it is the case that no school would or could be provided which would conform exactly to the statutory definition contained in the 1899 Act, and since the sale of the site would mean that education is no longer provided there, the Charity Commission would need to approve a scheme for the disposal of proceeds from sale. Such a scheme would is known as a 'Cy-pres Scheme' and would need to demonstrate that the objects of the original gift can no longer be achieved and that suitable alternative objects are being proposed.
17. A proposed outline alternative scheme is described in this report.

18. Once the charitable scheme is agreed by the Charity Commission, officers will put further recommendations to this Committee in light of the response of the Charity Commission.

Charity Commission approval

19. Charity Commission approval will be needed firstly to vary the original objects under which the land was gifted and secondly to agree the manner in which it is proposed that the proceeds will be spent.
20. On the matter of the original objects, the definition of technical instruction under the 1889 Act is instruction in principles of science and art applicable to industries and the application of special branches of science and art to specific industries or employment. It was for this purpose that the land was gifted but this type of school is no longer in existence.
21. The Technical Instruction Act 1889 established a national framework for technical education in an attempt to halt industrial and manufacturing decline through lack of a suitably skilled workforce, a situation made evident by the Great Exhibition of 1851 and the Paris Exhibition of 1867.
22. It is necessary, therefore, to seek to modernise/update the original objects. Given that the basis of the old trusts was for “a school for technical or manual instruction as defined by the Technical Instruction Act 1889” and that to gain Charity Commission approval an alternative scheme must demonstrate that the new objects have regard to the spirit of the original gift, the new objects will need to demonstrate an intention to advance education, particularly in the areas of science, technology, engineering and mathematics
23. Such objects will likely be acceptable to the Charity Commission, provided they are properly drafted so as to be exclusively charitable. The Commission will be unlikely agree to the spending of the funds on anything that the Local Authority is obliged to provide under Education Legislation.
24. The Commission will only grant such a scheme where they are satisfied that sufficient and suitable public consultation has taken place, particularly as this matter relates to the closure of a school.
25. It is most likely that the Charity Commission will insist on publicly advertising the proposed new objects for a period of time (usually around 2-3 months).
26. As to agreeing the manner in which the proceeds will be spent, once the charitable scheme is agreed by the Charity Commission, a further report will be put to Members for approval. The exact nature of the

recommendations will be determined by the response of the Charity Commission.

27. The proceeds of sale will amount to permanent endowment and, as such, a resolution of the trustees will be required to spend the proceeds. Advice to the Council suggests that the Commission may be reluctant to agree to the spending of the entire permanent endowment fund in one fell-swoop due to the need to balance the needs of future beneficiaries against current beneficiaries. Again, the Commission will also be unlikely to agree to the spending of the proceeds on anything that the Local Authority is obliged to fund.

Proposed alternative charitable scheme

Context

28. To allow the benefit of the charitable status to follow the pupils, it is proposed to substitute the initial benefit with an alternative scheme that supports teaching and learning in the 21st Century. The purpose of the initial gift of 1891 was to provide a school for technical or manual instruction. The underlying feature of the proposed alternative scheme maintains that purpose by seeking to improve pupil's technological understanding and skills base, and thereby equip them for the technological challenges and opportunities of today's world.
29. In October 2020 Welsh Government published details of the new curriculum for Wales roll out. At its heart the new curriculum has four core purposes with the aim of supporting learners to become –
- ambitious, capable learners, ready to learn throughout their lives
 - enterprising, creative contributors, ready to play a full part in life and work
 - ethical, informed citizens of Wales and the world
 - healthy, confident individuals, ready to lead fulfilling lives as valued members of society
30. All schools in Wales will be ensuring that the core purposes are at the heart of curriculum delivery. In particular relation to this report, school leaders will be required to ensure that pupils are able to 'use digital technologies creatively to communicate, find and analyse information'.
31. Additionally digital competence is recognised to be an important aspect of cross cutting theme **Career and work related experiences** (CWRE) which spans all curriculum areas of learning, with the guidance noting

Increasingly, the world of work requires the ability to use digital

technology in a wide range of situations. With an ever-evolving and international world of work, learners need to develop their digital confidence and capability, which will enhance their communication skills, as well as be able to access CWRE opportunities and analyse information from beyond their own locality.

32. The Area of Learning and Experience for Science and Technology contains the detailed progression steps for the development of computing and digital skills and can be accessed following the link <https://hwb.gov.wales/curriculum-for-wales/science-and-technology/descriptions-of-learning/>

It is proposed, therefore, to use the financial benefits accrued from the sale of Glanafan Comprehensive school site to invest in pupils' education through improving access to the set of skills, knowledge and attitudes to enable the confident, creative and critical use of technologies and systems. In particular, it is proposed to support pupils in the schools that have replaced Glanafan Comprehensive school, namely: Ysgol Bae Baglan and Ysgol Cwm Brombil.

Consultation

33. If approved the Charities Commission may require consultation to be undertaken.

Financial Impact

34. The sale value of Glanafan Comprehensive School site is £545k. Members have previously agreed that capital sales resulting from school re-organisations shall be used for the purposes of education and included in the education budget.

Integrated Impact Assessment

35. A first stage integrated impact assessment (IIA) has been completed and has concluded that a full IIA is not required

Workforce Impact

36. There are no workforce impacts directly associated with this proposal.

Legal Impacts

37. The School Sites Act 1841 and the Reverter of Sites Act 1987 provide for the land to revert to original donor if it is used for other purposes. We are advised that this reverter to the original donor does not apply in this case.

38. The Technical Instruction Act 1889 defines a school that provides instruction in principles of science and art applicable to industries and the application of special branches of science and art to specific industries or employment. This type of school is no longer in existence in Neath Port Talbot.
39. Specialist advice has been sought which confirms that the conveyance did in fact create a charitable trust.
40. The Council was able to dispose of the site under the power of Trustee derived from the Trusts of Land and appointment of Trustees Act 1996. The Council advertised the proposed sale of the school site before it was sold to Coastal Housing back in 2017 and also obtained a valuation report in accordance with the Charities Act 2011.
41. An application to the Charity Commission will be required pursuant to section 280 Charities Act 2011 that the Commission agrees with the manner in which it is proposed that the proceeds will be spent.
42. Section 280 of the Charities Act enables the Council as the trustee of the charitable trust to pass a resolution enabling it to invest the sale proceeds.
43. Section 282 of the Charities Act 2011 applies to larger charities such as the one relating to the proceeds of sale of Glanafan School. Under Section 282, the Council as the charitable trustee may pass a resolution to free the fund from the restriction preventing the proceeds of sale from being 'spent', namely, used for charitable purposes. To do so, it must be satisfied that the purposes of the charitable trust could be carried out more effectively if the sale proceeds are spent.
44. While the grounds for passing such a resolution under Section 282 are clearly made out (since it is no longer to provide a school under the TIA 1889), the Council must **also**, in addition to passing this resolution, apply to the Charity Commission for approval of a 'Cy-pres Scheme' for application of the sale proceeds for an alternative suitable charitable purpose.

Risk Management

45. A risk assessment has been carried out under the Council's Risk management Policy 2018.
46. There is a risk that the Charities Commission will not approve the Cy-pres scheme submitted to them but if so then the matter can be brought back to Cabinet Board and an alternative scheme proposed.
47. Failure to progress the report and seek permission from the Charities Commission to distribute the funds from the sale of the site to the two school will mean that opportunities to provide resources to support the purpose of the original trust will be lost, which would be detrimental to the pupils.

Recommendations

48. That Members:
 - a. consent to the submission of an application to the Charity Commission of a scheme summarised in the 'Proposed alternative charitable scheme' section above to vary the original objects under which the land for the former Glanafan Comprehensive School was gifted; and
 - b. approve the above outline proposal for the manner in which the proceeds are to be spent, and
 - c. Resolve under Section 282 of the Charities Act 2011 that the fund ought to be freed from the restrictions with respect to expenditure of capital that apply to it, and
 - d. Resolve under Section 280 of the Charities Act 2011 that the sale proceeds can be invested.

Reasons for the Proposed Decision

49. This decision is necessary to comply with the legislative requirements to enable the proceeds of the sale of the site of the former Glanafan Comprehensive School.

Implementation of Decision

50. The decision is proposed for implementation after the 3-day call-in period.

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