

## **The Sir Edward Heath Charitable Trust**

### **Decision of the Charity Commission as to whether to make a Scheme**

#### **1. The issue**

- 1.1 The Sir Edward Heath Charitable Trust was created by Sir Edward Heath in his Will of 16 April 2002. The Will was proved on 18 January 2006. The trusts of the charity were amended by deeds dated 6 February 2006 and 18 February 2010 and by a scheme of 17 May 2010.
- 1.2 The charity has six charitable objects which are all of equal standing. The first listed is, for the public benefit ‘the preservation and conservation of Arundells and its associated amenities as a building both of special architectural and historical interest being the home of Sir Edward Heath’ (clause 2(2)). The second is “the preservation of the furniture pictures memorabilia and chattels ordinarily kept at Arundells (excepting such items the trustees consider inappropriate) and such of any other furniture pictures memorabilia and chattels as shall form part of the Charitable Trust and which the Trustees consider appropriate to preserve’. The third object is ‘the administration, maintenance and preservation’ of Sir Edward Heath’s papers. The fourth is ‘the advancement of education by the facilitation and access to and the study and appreciation of Arundells and its contents by the general public’. The fifth is the advancement of education in the artistic appreciation of music ‘whether at Arundells or elsewhere’. The final object provides for ‘such other purposes which are exclusively charitable according to the law of England and Wales’.
- 1.3 The trustees have discretion to apply the income for any one or more of the charitable objects (clause 3 (2)). Clause 4 (1) gives the trustees power to “at any time or times until (and if it shall ever happen) the whole of the capital of the Charitable Trust Fund ... to or for the benefit of any one or more of the Charitable Objects in such manner as they shall on their absolute discretion think fit”.
- 1.4 The trustees wish to sell Arundells for the reasons discussed later in this Decision. It is arguable that they might invoke the power of sale under clause 5(15) of the trusts. However, that power is exercisable only in furtherance of the charitable objects and, since a number of the charitable objects would be frustrated by such a sale, there remains a degree of uncertainty about whether that power can be relied on. The trustees have applied for a Scheme.
- 1.3 The Charity Commission produced a draft Scheme under section 13(1) of the Charities Act 1993. The draft Scheme provides for a power of sale of Arundells and the disposal of the chattels.
- 1.4 The Commission gave public notice of its intention to make the Scheme. 234 representations were received including thirteen from MPs, many on behalf of their constituents. The vast majority of the representations were opposed to the proposals. David Locke, Executive Director of Charity Services (“the reviewer”) was appointed to review the representations and draft Scheme in accordance with the Commission’s decision review procedures.

## **2. How the decision was made**

- 2.1 The decision was made by the reviewer on 23 September 2011.
- 2.2 The reviewer read the representations made by all the interested parties who are opposed to and who support the Scheme.
- 2.3 The Commission gave all the interested parties an opportunity to make oral representations. Ten of those individuals accepted the invitation to do so. On 18 August 2011 the reviewer heard oral representations over the telephone from nine of them and saw one individual, Mr. Tony Burnside, in person. At the end of each meeting or telephone call the reviewer asked if those making representations had provided everything they thought relevant to the Commission.
- 2.4 The reviewer then met Lord Armstrong of Ilminster, the Chair of the trustees, on 14 September 2011. He gave him a full opportunity to explain why the trustees consider that the Scheme should be made and raised with him some of the matters that had been raised by the representations received.
- 2.5 The reviewer considered all the Commission's papers relating to this matter and all the evidence provided, before reaching this decision.

## **3. The decision**

- 3.1 The role of the reviewer is to determine whether or not the Commission should make the proposed Scheme for the charity.
- 3.2 In this case the decision is that the Scheme should not be made. This is because the reviewer is not satisfied that the trustees have properly identified and explored the range of alternative ways of generating income. He advises the trustees to take the following steps:
  - Consider whether they have all the right skills on their trustee Board or whether it is necessary to co-opt additional trustees with marketing, fundraising and/or events management expertise.
  - Obtain professional advice on fundraising and explore the viability of a public appeal to raise funds to preserve Arundells and the viability of securing funds from charitable trusts and foundations and corporate foundations as well as corporate sponsorship and philanthropic sources.
  - Although the Heritage Lottery Fund have indicated that an application solely to ensure the maintenance and financial sustainability of the house is unlikely to be successful, they do fund a wide range of programmes related to learning, conservation and participation. No application has been made and the reviewer advises the trustees to seriously consider whether it is possible to bid for funds under any of these categories to improve the financial position of the trust.
  - Obtain professional advice from events management professionals on the viability of raising funds for the trust through holding events at Arundells.
  - Explore with the local authority planning authority what their attitude would be to events being run from Arundells and, if appropriate, apply for such planning permission.
  - Explore with the National Trust (Mompesson House), The Rifles Museum and Salisbury Museum whether there is greater scope for collaborative

initiatives that would enable the trustees to increase visitor numbers to Arundells and/or reduce running costs.

- Meet with Mr. Burnside from the Friends of Arundells and consider whether there is the possibility to better use volunteers to raise funds for the Trust and to increase revenue and reduce overheads.
- Consider whether a trading subsidiary should be established to run a commercial operation. Consider whether it is necessary to bring in external expertise to develop such commercial operations.

3.3 It is open to the trustees to make a fresh application for a Scheme at a future date.

#### **4. The test for the Commission**

4.1 In this case the reviewer considered whether there was a failure of the trusts and a cy-pres case was made out. He considered whether section 13(1)(a)(ii) of the Charities Act 1993 had been met, namely: "the original purposes, in whole or in part ... cannot be carried out, or not according to the directions given and to the spirit of the gift".

4.2 He also considered section 13(1)(e)(iii) of the Charities Act 1993 and whether: "the original purposes, in whole or in part, have ... ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had the appropriate considerations".

4.3 As the Charity Commission has explained to the trustees, there is a degree of uncertainty and it is not a straightforward cy-pres case. In the light of the unusual circumstances, the reviewer went on to consider whether the Commission could give the power to sell on the basis of the lesser test, of expediency.

4.4 As a Public Body the Charity Commission has a Public Sector Equality Duty laid down in section 149 of the Equality Act 2010. In reaching his decision David Locke had regard to the needs set out in the Act, namely to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.5 The reviewer has considered the human rights of the trustees of the charity because Article 1 of the First Protocol of the Human Rights Act 1998 has the potential to be engaged, as this decision does result in the charity not being free to dispose of its property.

#### **5. Consideration of the issues raised / applying the legal test**

5.1 For the reasons outlined below the reviewer was not satisfied that a cy-pres case had been made out, he also judged that in the light of the impact of sale on the charity's ability to carry out its purposes and his finding that alternative ways of

generating income should be explored, that it cannot be concluded that a power to sell would be expedient in the interests of the charity.

- 5.2 When looking at the spirit of the charitable gift in the Will of Sir Edward Heath, it is clear that four out of six of the charitable objects relate specifically to Arundells, albeit that the object relating to the advancement of education by the appreciation of music can be at Arundells or elsewhere. Whilst it could be argued that the spirit of the gift is simply the memorialisation of Sir Edward Heath, this is not conclusive and is not the view that the reviewer has reached. Arundells is a house of genuine historical and architectural merit, containing works of art and decorative features of worth, both intrinsically and culturally. The reviewer considers that Arundells is an essential and integral part of the trust's purposes. It is therefore necessary to consider whether all of the obvious methods of generating funds have been adequately explored and rejected, or properly tried and proved unsuccessful.
- 5.3 When looking at the social and economic circumstances now prevailing, the reviewer took on board the trustees' comments about declining interest in the life and legacy of Sir Edward Heath. The reviewer also considered the significance of Arundells and its contents in addition to its association with Sir Edward Heath.
- 5.4 The reviewer accepts that there are annual deficits being incurred by the trustees on opening Arundells to the public. It is projected that the deficit for 2011 will be in the region of £150,000. The Commission authorised the sale of the archive in 2010. This raised £850,000 of which Lord Armstrong confirmed £450,000 went on eliminating the overdraft. Whilst the balance could be used to keep Arundells open till 2013 the trustees are genuinely concerned that this will reduce the funds that can be applied for other good causes close to Sir Edward Heath and is not the best use of charitable funds. Furthermore the trustees are concerned about repair costs to the building, including the need to replace the boiler, window frames and floor coverings. At the meeting on 14 September Lord Armstrong indicated these could be as much as £100,000 over and above the annual costs of approximately £50,000 p.a.
- 5.5 The trustees clearly take their responsibilities seriously and wish to fulfil the wishes of Sir Edward Heath. Lord Armstrong has been a trustee of Leeds Castle as well as Wells Cathedral School Foundation and other charitable bodies. The property has limited facilities and there are difficulties with the layout of the house (namely that many of the rooms are quite small) and the proximity of neighbours.
- 5.6 Many of the representations received express the view that Arundells has not been properly marketed, that the opening hours and booking system deter many people, that visitor numbers can and should be much higher bearing in mind the location of the house. They point to the 500,000 visitors p.a. to Salisbury Cathedral and the success of Mompesson House. Many ask why applications for funding have not been made to the Heritage Memorial Fund, why a public appeal has not been mounted and why events are held at the house. Arundells has attracted considerable media interest in the light of the trustees' proposals. There may be an opportunity to exploit such coverage to mount a public appeal.
- 5.7 The trustees provided a letter dated 4 November 2010 from Ms. Carole Souter of the Heritage Lottery Fund. This states that they would not consider an application solely to "ensure the long term maintenance and financial sustainability of the house". It states that applications "must be for projects that help people to learn about their heritage and either conserve for all to enjoy, or allow people to take

an active part in, their heritage". I have also seen the letter of 20 October 2010 that the trustees wrote to the Heritage Lottery Fund. This is very much positioned around the decision to sell and seeks merely revenue costs. The reviewer is not satisfied that the trustees have fully explored the possibility of securing funding from this or other sources. Whilst Lord Armstrong's view is that it would be difficult to get corporate funds or secure money from charitable foundations or philanthropists, the reviewer is not satisfied that reasonable efforts have been made to test this out.

5.8 The house and garden are very attractive and many of the representations made suggest how this could be used to generate income. Lord Armstrong has explained that there are difficulties with the lack of toilet and catering facilities and he feels that planning consent would be denied. The reviewer notes that the trustees have not sought professional advice from events management specialists. They have not applied for planning permission to hold events there. The reviewer considers that this option has not been properly explored and advises the trustees to do so.

5.9 Mr. Burnside has said that many members of the group 'The Friends of Arundells' would be willing to volunteer their time to help support and raise funds for Arundells. Lord Armstrong at his meeting with the reviewer agreed that he would meet with Mr. Burnside in private after the Commission's decision was issued. The reviewer considers that the trustees should explore with Mr. Burnside and others such offers of help and see whether they can harness this support to help secure Arundells.

5.10 Arundells is located close to Salisbury Cathedral, Mompesson House, The Rifles Museum and Salisbury Museum. Already visitors to Arundells use the Museum toilets. The reviewer believes that the trustees should explore whether there is greater scope for collaborative initiatives that would enable the trustees to increase visitor numbers to Arundells and/or reduce running costs

5.11 The reviewer had regard to the needs set out in section 149(1) of the Equality Act 2010 and concluded that none was engaged in this case.

5.11 On the human rights point, the reviewer has determined that even if the first protocol, article one right is engaged, the inhibition on sale is contained in the original gift. The refusal to remove that inhibition is made (in accordance with a well-developed legal framework) to ensure that the property continues to be used in accordance with the general interest, being the charitable public benefit that results from this charity carrying out its purposes (at least for the time being) in accordance with the spirit of the gift.

## **6. Conclusion**

6.1 The reviewer has concluded that it would not be appropriate to seal the Scheme for the reasons outlined. He has advised the trustees to consider a number of recommendations. It will be open to the Sir Edward Heath Charitable Trust to make a new application for a Scheme at a future date.