

I Castro
Save our Stade Committee

By email

1 June 2009

Dear Mr Castro

Hastings Borough Council

I am writing further to your email to me dated 19 May 2009. Your email asks me to consider a number of matters you are concerned about regarding the 'Jerwood Gallery' project, specifically the:

- transfer of open space to an unaccountable organisation based in Liechtenstein
- absence of a proper business plan to justify benefits from the project and Gallery opening hours
- lack of justification for waiving business rates
- conflict between HMRC advice and reasons for charging admission and VAT. Details of admission prices not available to review.
- Failure to secure VFM, failure to follow due process and illegal action.

I have discussed these matters with the Council's Deputy Chief Executive (and Chief Financial Officer). I have also reviewed the information considered by the Council's Cabinet in reaching its decisions about the project to date. My comments on the above matters are provided in the following paragraphs.

Transfer of open space to an unaccountable organisation based in Liechtenstein

The Deputy Chief Executive has provided me with details about the land which is due to be leased to the Jerwood Foundation. A small parcel of land owned in part by the Council and in part by the Foreshore Trust, is due to be developed by the Jerwood Foundation to construct and then operate an Art Gallery. The Council has decided to lease the parcel of land it owns to the Foreshore Trust which will, in turn, lease the combined site to the Jerwood Foundation to construct an Art Gallery. The Gallery is expected to be operated solely by the Jerwood Foundation. The Council has plans to develop the area surrounding the Gallery to provide further services and enhanced community assets.

The Gallery will need to be operated in accordance with the lease conditions. The Council and the Foreshore Trust are due to put arrangements in place to maintain oversight of the situation. The leases between the various parties have been prepared in draft and the Deputy Chief Executive has confirmed both contain the conditions highlighted above. The Jerwood Foundation should therefore be accountable for the activities undertaken on the land leased to it.

I have asked the Deputy Chief Executive to keep me informed about the progress in finalising these leases and will discuss how the Council and the Foreshore Trust propose to monitor compliance with the lease terms. I will then decide if there are any further enquiries I need to make into this matter.

Tel 020 7065 0000 | Fax 020 7065 0650

www.pkf.co.uk

PKF (UK) LLP | Farringdon Place | 20 Farringdon Road | London | EC1M 3AP | DX 479 London/Chancery Lane

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Absence of a proper business plan to justify benefits from the project and Gallery opening hours

Your email highlights you have not seen a business plan (for the Gallery) and goes on to say the Council does not know the hours the Gallery will be open. The Gallery is due to be operated by the Jerwood Foundation and decisions on the operation of the Gallery itself and its opening hours are a matter for the Foundation. The Deputy Chief Executive has told me the Council is working in partnership with the Foundation to ensure the Gallery is accessible to local people at a reasonable cost. In the event opening hours are unreasonable or restricted, the risk of failure of the Gallery would lie with the Foundation.

The Council is due to provide services in the surrounding Stade area which should complement the Gallery building. The Council plans to evaluate these services and the achievement of the overall objectives set for the project. I have asked to be kept informed of the outcome of the Council's evaluation when it is complete and will then consider if there is any further work I need to undertake on this matter.

No justification for waiving business rates

The Cabinet approved officer's recommendation to reimburse the Jerwood Foundation for the business rates due for the Gallery building at a (Cabinet) meeting held on 9 June 2008. Ultimately it is for the Council to decide if such relief should be awarded and it has followed its own procedures in obtaining the approval of the Cabinet. The value of the relief has been estimated at up to £70,000 per annum and Members were provided with this information in deciding to award the rate relief. The Council's decision appears to me to be a reasonable one and there is no action I am minded to take on this matter.

Conflict between HMRC advice and reasons for charging admission and VAT. Details of admission prices not available to review

I am not aware of the 'HMRC advice' you are referring to. However, I have asked the Deputy Chief Executive for his comments on this matter. Hastings will not be operating the Gallery building and there are no VAT implications for the Council. If you have further information about the impact of the project on the Council's VAT arrangements I will consider it. There does not appear to me to be any work I need to undertake on this matter.

The Council is failing to secure VFM, has not followed due process and may be acting illegally

I have reviewed the reports considered by the Cabinet in deciding to proceed with the project and its partnership with the Jerwood Foundation. Clearly, the project is at an early stage and the Council is aware it will need to demonstrate value for money is being secured as services are developed and delivered around the Gallery site. In a report to the Cabinet meeting held on 30 March 2009, officers highlighted the Council's contribution to the aspects of the project it is responsible for amount to £1.5 million. Contributions from the Council's strategic partners amount to £3.2 million making a total resource of £4.7 million available to invest in the Council's scheme. The area should also benefit from the new Gallery the Foundation is due to construct. Hastings considers the project offers good value for money and I will be keeping this matter under review, reporting the outcome in my annual reports to the Council.

The reports to Cabinet meetings held on 21 January 2008; 9 June 2008 and 30 March 2009 contain details about the decisions the Council has made regarding the Jerwood Gallery. Officers have sought, and been provided with, the approval of Members to progress the scheme and there is no evidence to suggest the Council is not following its own procedures. If you have evidence the Council is not following 'due process' I would be pleased to consider it.

The reports highlighted above contain sufficient legal and financial advice to allow Members to reach a reasonable decision to progress with the scheme. The Council does not appear to me to have entered into any unlawful transactions. If you have evidence to support your concerns I will consider it.

Final comments

I trust you find the above comments to be helpful in responding to the matters you have raised with me. I can assure you I have considered your concerns in the context of my responsibilities as the Council's external auditor. I am aware of the high level of interest among local people about the Jerwood Gallery scheme and the Council's partnership with the Jerwood Foundation. Indeed, I am continuing to discuss the progress of the scheme with officers.

If there is any additional information you feel I should review then I will consider it. I cannot look into matters about the Council's policies or procedures or anything that is not related to the accounts I am auditing.

You may find the attached leaflet about the rights of local electors to be helpful should you decide to contact me again.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Grant', with a stylized flourish at the end.

Robert Grant
Partner
PKF (UK) LLP