

Executive Committee

Abbey Ward

20 May 2009

PAOLOZZI MURAL TRUST

(Report of Head of Legal, Democratic and Property Services)

1. Summary of Proposals

- 1.1 To consider actions that are required to regularise the Council's Trusteeship of the Paolozzi Murals and the Paolozzi Mural fund.
- 1.2 To consider the appointment of the Leader of the Council and the Chief Finance Officer to be the Trustees of the Trust.
- 1.3 To consider the name under which the Trust should be registered.

2. Recommendations

The Committee is asked to RECOMMEND

- 1) **that authority be delegated to the Legal Services Manager to take all necessary steps required by law to register the Trust as a charity with the Charity Commission;**
- 2) **that the Trust be registered as a charity with such name as may be proposed by Members subject to such name being available for registration purposes.**
- 3) **that the Leader of the Council and the Council's Chief Finance Officer be appointed by the Council to perform the Council's Trustee role for the Trust;**

3. Financial, Legal, Policy, and Risk Implications

Financial

- 3.1 The Council and all Co Trustee need to make arrangements to receive the Paolozzi Mural fund and deal with the investment and expenditure of the same in accordance with the Trust Deed. The Mural Fund currently stands at £133,171 although the purposes for which the Mural Fund can be used are restricted.
- 3.2 The trust deed provides that the owners of the murals (Scottish Widows) shall insure the mural to it's full replacement cost at their expense.
- 3.3 There are no fees payable for charitable registration. All legal costs will be met internally within existing resources.

Legal

- 3.4 Under Section 139 of the Local Government Act 1972, the Council may accept, hold and administer gifts or property (real or personal) for the benefit of the inhabitants of their area and may execute any works accidental to or consequential on the exercise of this power. 'Real' property is generally land and 'personal' property is generally movable property (e.g. paintings), Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate or is conducive or incidental to the discharge of the Council's functions, which includes the exercise of any powers in the 1972 Act, such as Section 139. In relation to the murals the Council's powers, as trustees, to deal with them is limited by the trust deed. Under the trust deed the trustees must preserve the mural and facilitate its enjoyment by members of the public. The trustees are under a duty to maintain the murals and may raise funds by way of donations to do so.
- 3.5 Section 9(3)(a)(1) of the Charities Act 2006 makes it obligatory for a charity to register if: it is set up for charitable purposes, it is not exempt and has an income of over £5000 per year.
- 3.6 In addition to the requirement for compulsory registration, duties are imposed upon the Trustees under the common law to act in accordance with the Trust, which in the present case is to 'facilitate the preservation' of the Paolozzi Murals and 'enable the same to be enjoyed by members of the public'.
- 3.7 There are also common law duties relating to accounting for Trust property and an overriding duty of care and good faith in relation to Trusteeship.

Policy

- 3.8 The Council currently has no policy in relation to the position where the Council is a Trustee.

Risk

- 3.9 Failure to register the Trust as a charity and comply with the requirements of the Charities Act 2006 may lead to the Charity Commission taking remedial action against the Trustees to regularise the position in relation to the Trust. The Commission has unlimited powers and can in effect 'do anything' necessary to ensure that the charitable trust is run in accordance with the law. This could include removal or suspension of a Trustee, or calling for an account for the application of Trust property.

Report

4. Background

- 4.1 In or around 1983 the Redditch Development Corporation, whilst building the Kingfisher Centre in Redditch, commissioned a set of 12 Murals from Sir Eduardo Paolozzi CBE RA. The commission was partly paid for from a grant from the Arts Council. At the time the grant from the Arts Council represented the largest grant it had made in the UK. It is understood that full funds were also forthcoming from the Needle Industries Group.
- 4.2 The Murals were duly erected in Millward Square in the Kingfisher Centre. On the 24th of February 1989, the then owners of the Kingfisher Centre, Shell Pension Trust Limited and Commercial Union Life Assurance Company Limited executed a lease of the Murals effectively giving the Murals on Trust to Redditch Borough Council and Needle Industries Group Limited. At the same time a fund of £40,000 was set aside for the maintenance of the Murals ('the Mural Fund').
- 4.3 The Deed of Trust requires that Shell Pension Trust Limited and Commercial Union Life Assurance Company Limited (the landlords) have to clean and maintain the Murals and insure them up to a premium of £1,000 per annum. There are provisions regarding replacing the Murals if they are destroyed.
- 4.4 The over-riding purpose of the Trust is to ensure that the Murals shall at all times be within Millward Square and capable of being readily viewed by the public. There are provisions for relocating the Murals and a provision that at the end of the Trust in 2025 Redditch Borough Council and the Needles Industries Group can purchase the Murals for nominal consideration.
- 4.5 Up until 2010 all interest that is earned on the Mural Fund has to be accumulated, except in so far as it is spent on the maintenance of the Murals. After 2010 income that is not used for the maintenance of the Murals may be used to promote the Visual Arts in Redditch.
- 4.6 Since the Trust was set up, Shell Pension Trust Limited and Commercial Union Life Assurance Company Limited have become part of the Scottish Widows Investment Group.
- 4.7 Needle Industries Group Limited has ceased trading, but now forms part of Coates PLC.
- 4.8 Once the Mural Fund was set up, it was supposed to have been transferred to a joint account between Redditch Borough Council and Needle Industries Group Limited. Unfortunately, this was never done and the Mural fund is still held in an account controlled by the

Accountants for Scottish Widows. It would appear that with accumulated interest the fund now amounts to over £133,171.

5. Key Issues

- 5.1 In 1988 investigations were made with the Charity Commission with a view to registering the Mural Trust as a charity. At that time registration was voluntary and was usually undertaken so as to obtain various advantages of charitable registration foremost amongst which would be tax free status. The Council received a letter from the Charity Commission confirming that clearance had been obtained from the Inland Revenue and that the charity could be registered. Unfortunately, the registration forms were never completed.
- 5.2 Since 1988 the law has changed considerably, particularly in 2006 with the coming into force of a new Charities Act. As a result of the changes since 1988, it would now appear that it is compulsory for the charity to be registered and that failure to do so could result in the Charity Commission taking proceedings against the Trustees to regularise the position.
- 5.3 The Legal Department have written to the Charity Commissioners seeking their advice on the issues of registration and incorporation. In order to register the Trust, the Trust will need to have a name which is not already taken by another charitable organisation. Officers have checked with the Charity Commission and the name of "The Redditch Paolozzi Mural Trust" would currently be available, if the Council wishes to seek registration of the Trust in this name. If some other name is proposed, then Officers will need to check whether or not the proposed name is available.
- 5.4 The Council has received a request from Scottish Widows Accountants to provide details of the account to which the Mural Fund should be sent. Enquiries were made revealing that Needle Industries Group Limited had now become a part of Coates PLC who were requested for their views regarding the destination of the Mural Funds. Coates PLC have made it very clear that they do not wish to be involved with the Murals and wish to be released from the Trust.
- 5.5 The Council, being a corporation, needs to appoint 2 officers to be signatories for the trust. The leader of the Council and the Chief Finance Officer, for the time being, have been identified as appropriate persons. As the appointments are expressed to be of officers "for the time being" difficulties of replacement appointments or retirement should be minimised. Changes of the details of all appointees will have to be disclosed to the Charity commission.

6. **Conclusion**

The situation needs to be regularised, particularly with regards to the Mural Fund. This can be done by registration as a charity and appointment of Trustees. Once this is done the Trustees can then consider any actions that may be undertaken to fulfil the primary objectives of their Trust namely to promote the viewing of the Murals, their maintenance and safety. Excess interest on the mural fund may possibly be applied for the Visual Arts in Redditch.

7. **Background Papers**

The Lease of the 24th of February 1989 and a copy of a letter from the Charity Commissioners the 19th of July 1988. Numerous files and correspondence with landlords and Co Trustees.

8. **Consultation**

There has been no consultation other than with the Portfolio Holder and relevant Council Officers.

10. **Author of Report**

The author of this report is Andy Teepe (Senior Solicitor) who can be contacted on extension 3264 (e-mail: andy.teepe@redditchbc.gov.uk) for more information.

11. **Appendices**

None.