
EXCERPT FROM THE MINUTES OF THE COMMUNITY OVERVIEW AND SCRUTINY PANEL HELD ON 25 NOVEMBER 2010

COSP.85/10 TULLIE HOUSE GOVERNANCE ARRANGEMENTS

The Strategic Director (Mr Crossley) submitted report GD.43/10 concerning the project currently in place to transfer Tullie House Museum and Art Gallery to a Trust which emanated from a decision taken by the Executive on 14 April 2009 (EX.068/09). The City Council had, on 14 July 2009, approved a budget of £150,000 to support the work programme.

Mr Crossley outlined the background to the Council's deliberations regarding the establishment of a Tullie House Museum and Art Gallery Trust, reminding Members that a Project Group had been established; various work streams initiated; and a 'critical friend' appointed with relevant experience to offer advice and assistance to the Council in relation to the project. Key to those work streams was the preparation of a Business Case to support the Trust proposal and, following a tendering process, Armstrong Watson were engaged to produce the document, a copy of which was set out at Appendix 2 to his report. He then outlined the rationale for the Business Case, pointing out that the establishment of a Trust also brought financial and structural benefits such as relief from business rates. In addition to the financial opportunities outlined, the Business Case also brought the proposed arrangements into the Council's Transformation Programme.

A Shadow Trust Board had been established and, after a rigorous recruitment process, Mr Roger Cooke had been appointed as the Chair. He had subsequently gone on to appoint Mr Alan Niekirk (Charities Lawyer and ex-Chair of the Friends of Tullie House) and Mr Andrew Smith (background in Accountancy) as fellow Shadow Board Members.

Tullie House Museum and Art Gallery was a very important part of the cultural offer available in the Carlisle City Region and the Tullie House Trust would play a vital role in safeguarding and enhancing the Museum's status. To that end, it was felt important that, in establishing a Trust, the Council identified its vision for the future of the institution as it became established and moved forward. The Assistant Director (Community Engagement) had worked with the Shadow Board and had produced the draft Vision Statement included at Appendix 1 to the report.

Details of the financial and legal context were also set out within the report.

In conclusion, Mr Crossley reported that the Business Case prepared by Armstrong Watson indicated that the establishment of a Trust was a viable way forward for the Museum and the City Council. The Executive would, however, wish to come to its own view on the Business Case and, to assist in that process, comments from Overview and Scrutiny would be considered.

The matter had been considered by Executive on 8 November 2010 (EX.178/10).

The Executive resolved that:

“That the Executive:

1. Noted the content of Report GD.43/10, together with the draft Vision Statement and Business Case appended thereto.
2. Referred the draft Vision Statement and Business Case to the Council's Community and Resources Overview and Scrutiny Panels (25 November and 7 December 2010 respectively) for scrutiny and comment. Such comments were being referred back to the Executive for its meeting on 13 December 2010.”

Mr Crossley submitted slides that presented the Tullie House Vision Statement and Business Case and that would allow key issues and concerns to be raised and discussed and assist Members in forming their recommendations back to the Executive and Full Council. Mr Crossley stressed that it was not a Business Plan but a Business Case that had been developed by Armstrong & Watson during the summer and autumn of 2010. Following this Panel, the matter would be discussed by the Resources Overview and Scrutiny Committee on 7 December 2010 and the Executive on 13 December 2010 before being presented to Council on 14 December 2010 for approval of the principle.

The Chair of the Tullie House Shadow Board (Mr Cooke) advised that the work would build on the community involvement via the Trustees, Friends of Tullie House and wider groups. The Trust Board would be responsible for the financial and managerial autonomy. Mr Cooke confirmed that the Council would retain ownership of Tullie House collections, along with any new items. The services agreed by the Council and Tullie House would be reviewed periodically. The final agreement would be a legal agreement of up to 30 years and normal practice would be that the Council would have the right to terminate the agreement. The Vision Statement was a long document that built on work already done but due to the current economic climate a prudent approach would be required in the early years of the Trust. Ms Watts (Armstrong & Watson) explained how the figures in the presentation had been reached and that the charges for central services would no longer be required as some services would need to be commissioned externally.

In considering the arrangements Members raised the following comments and questions:

- Members were advised in May 2009 that there would be consultation with residents but had been advised that none had been carried out. What have the Shadow Board or the Council done to engage with the people of Carlisle?

Mr Crossley advised that as there would be no outward change to the move to Trust status it would not be necessary to consult and there were no plans for widespread consultation.

- The Vision Statement and Business Case refer to aims and wishes but no hard facts. What will be delivered? How long will the process take? Is the plan viable for the Council?

Mr Cooke advised that the Vision Statement was an aspirational document but that the Shadow Board were trying to be realistic. Once there was a clear decision from the Council a Business Plan would be established.

Councillor Ellis stated that the project would be viable and that the move was being made to secure the future of Tullie House.

Mr Crossley explained that the Business Case was produced to ensure the costs of the projects were acceptable. The report from Armstrong Watson confirmed that the project was viable for both Tullie House and the Council. The Council would sign up to the same Vision Statement as the Board, and work with community support, education and tourism were the most important aspects.

- Under the financial section of the Vision Statement it states that the Trust will 'ensure that Tullie House is well-run and that the Trust is financially sound'. How will that be monitored and reported back?

Mr Crossley explained that, with the Panel's support, there would be clear transparency. Also the Performance Indicators would show whether targets were being reached. The Council would want to play a part in the project up to transfer and beyond. With regard to finance the Business Plan would show how the work would move forward. He asked the Panel to keep an open mind on the progress and advised that there was a possibility that more money may need to be put into the project.

- Arts Council funding has been reduced by 15%. Would that have an impact on the financial viability of the Trust? The Member was concerned whether there would be other funds available.

Mr Cooke advised that at present there were two important sources of external funding – the Museum, Library and Archive Council and the Hub for community education and the outreach programme. He was aware that funding would be reduced next year and that funding thereafter was uncertain. The Trust would need to find ways to bring services in house and that funding would be sought from the Arts Council for special exhibitions but that the programme may have to be reduced in the future. The Trust would be able to seek funding from private foundations and semi public organisations. With regard to operations the Trust would need to pull their belts in but it would be a difficult situation for everyone.

Ms Watts advised that there had been no assumptions that money would be available from other funds and the budget had been based on what was known and what was happening now.

- With regard to the cash funding shortfall would the new budget eliminate that shortfall?

Ms Watts advised that the approved budget had indicated that Tullie House would be able to operate as a viable concern.

- There would be no room for the Council to move in future budgets.

Mr Mason advised that most of the cash shortfall was the cost of services that the Trust would not be able to get from the Council. That had originally been a 20% saving but had been reduced to a 15% saving. £123,000 would be used to buy in services that the Council could no longer provide.

- There is a concern that there is no clear indication of the impact on the Council. The Business Case had been produced by a consultancy team selected by the Trust Shadow Board and there was a concern that the Council were not being given the full picture regarding the impact on the Council regarding the transfer. There was no proper risk management detail in the report. The Council were being asked to agree to the transfer in a short time but the full details are not clear. Previous papers stated that the project would be carried out under Prince 2 methodology. Has that been the case? There is no evidence that a Project Board is in place and where is the information being reported to? Each stage should be reported but Members have seen no reports.

Councillor Ellis confirmed that there was a Project Board and that they met regularly. While there had been no regular reports, reports had been made available to Scrutiny Members on several occasions and the Board had tried to follow the scrutiny process. The draft Business Case and Vision Statement were works in progress and work had been ongoing for the last 18 months. He agreed that risks did need to be properly managed.

Mr Crossley advised that while the Board did not have all the documentation of Prince 2 the process was being managed to the Council's timetable of meetings and that there had been the right level of documentation. The documents had been submitted to the Senior Management Team and the Joint Management Team other documents may expand on the consideration of the risks in a timely manner. The Executive had received sufficient information with regard to risks to enable them to make an in principle decision on 14 December 2010. If they agree with the Business Case then they would resolve to sign off the project and start the process to enable Trust status commencing in April 2011.

- A report approved by the Executive in June 2009 had agreed that Prince 2 methodology should be used with regard to the project. That would have produced an indication of every risk including the likelihood and impact of risk to the Council and

how that risk would be managed. The Council cannot make a decision until that risk planning is in place. Without risk management there is no reassurance that the risks can be managed. Members need that reassurance.

Mr Crossley advised that that information had been through the scrutiny process in detail and that the risks had been considered by the programme management board who had been transparent in their work, and that the Business Case gave the mitigation of the risks involved.

- The risks need to be made available to the Resources Overview and Scrutiny Panel. If the Executive says it is going to do something then it must do it. The documents need to be available for scrutiny.

Councillor Ellis confirmed that he and Mr Crossley had discussed the risks and measures were being put in place that would ensure they had been resolved by 14 December, by the time of transfer or whenever they were expected to be resolved. He apologised that the information had not been presented to the Panel.

- A Member believed that it wasn't only a matter of the risks being resolved it was also looking at the assessment of the risks to the Council and whether they were high or lower category risks. The Council has a risk management policy and that should have been used.

Mr Crossley agreed to circulate documents that would indicate the full details of the risks involved. That information would be made available in time to be considered by the Resources Overview and Scrutiny Panel at their meeting on 7 December 2010.

- The Business Case stated that the Council would be responsible for the collection and the maintenance of the Tullie House building. What is the cost to the Council over the next 5/10/15 year period and is there a backlog of work? With regard to the collection what is the cost to the Council for the work carried out periodically on it?

Councillor Ellis explained the maintenance was not a new cost and there would be the same relationship as with the community centres and the Sands Centre. He confirmed that there were no problems with a backlog of work.

Mr Mason advised that there is a 5 year maintenance programme. There had been a reduction in energy costs due to work brought forward at Tullie House.

- The museum cannot show all the collection at any one time and there is currently no space for extra items. At some point in the future the Trust will want to expand the collection into buildings around Tullie House. Would the Council be responsible for the maintenance of those buildings? And who was picking up the costs Public Liability Insurance?

Mr Cooke confirmed that the Trust would pick up the Public Liability insurance. Mr Crossley advised that the City Council would be the landlord for the buildings if the building was within the facility. While there was capital available within the City Council the Council was in an era of looking for new opportunities.

With regard to the collections Mr Cooke explained that the Trust would be responsible for the conservation, maintenance and management of the collections.

- Education and learning are an important part of Tullie House and many residents do not visit regularly but take advantage of the educational resource. The Vision Statement states that 'the Trust will continue to the best of its ability to provide educational resources and opportunities for local communities and tourists to learn.....'. However, the Business Case states "the Trust's ability to maintain education and outreach services at anything like the present levels cannot be guaranteed." How sure are the Board that the provision will be the same level as now? There is a concern that once it's gone it's gone.

Mr Cooke explained that when the Business Case was prepared it made the assumption that funding from the Hub would end in 2011 but it was now likely to continue until March 2012. That would allow some time to allow those costs to be brought into the mainstream Tullie House budget. While it would be difficult to continue the education and outreach levels at the present levels in the short term, Mr Cooke was more optimistic than he was a month ago. He stated that the Board were determined that the facility would not go altogether and were conscious that museums and art galleries had links to the community. There were some tough decisions to be made over the next few months.

- The Business Case states that there are a number of major critical steps that need to be completed prior to the point of transfer. Will that be done?

Mr Crossley advised that they would not have to be completed as the decision of the Council is 'in principle' and some of the work had been completed since the report was written. Subject to scrutiny the provisions in principle decision would affect the Business Case as it would need to inform as much as possible what had been done and seek approval in principle.

- The Business Case talks of appropriate support for the Shadow Board. Does the Council have the facility to provide that support and is the Council providing it now?

Mr Cooke confirmed that the level of support from senior members of the Council had been impressive. Mr Crossley confirmed that the Council would continue to give support until the Council had discharged all its obligations.

Councillor Ellis asked whether the Panel would wish to have a further briefing at the same time as the Resources Overview and Scrutiny Panel. The Chairman confirmed that the matter was being considered at the Resources Overview and Scrutiny Panel and the Community Panel would have sight of the additional information.

- There was concern that the current and proposed admissions policy may be illegal.

The Assistant Director (Governance) (Mr Lambert) advised that the issue had been raised by the Egeria report and that the scheme was open to challenge under two articles of the Treaty on the Functioning of the EU treaty, namely articles 18 and 56. The Shadow Board were looking at ways to provide a reduced scheme for residents of Carlisle.

Ms Watts advised that there were also VAT implications as VAT could not be recovered on free admissions. Mr Mason advised that VAT was included in the risk management papers.

- Why does the Business Case refer to a 3 year business plan but the agreement in the report suggested 5 years?

Mr Mason advised that the 3 years included years 3, 4 and 5. Mr Cooke stated that the principle point of the Egeria report was for a long term agreement and that at a time when most corporations were not producing 3/4/5 year budgets as it was difficult to foresee what the future held the Business Case had delivered a 3 year budget. When the Business Plan was developed that would look at year 4/5.

- Is the Hub funding dependent upon achieving guaranteed numbers?

The Arts and Museums Manager (Ms Wade) advised that the Hub funding was based on the Performance Indicators and they had been exceeded each year and a PI would be created for the coming year that the Board hoped to meet. An application bid was currently in regarding funding from the Hub.

- Do we have consenture from the County Council and the Millennium Commission?

Mr Lambert advised that in correspondence with regard to the gallery the County Council and Millennium Commission were in correspondence with the Council. AS landlord, the County Council could not reasonably withhold their consent. In relation to the Millennium Commission, this had been superseded by the Big Lottery Fund. There were conditions attached to the funding received from the then Millennium Commission but officers were not aware of any potential problems.

- With regard to Governance what would happen if the City Council ceased to exist in its present form? If the Council was taken over by a new body what would happen if that body did not wish to support the Trust?

Mr Lambert advised that the new body would stand in the shoes of the City Council. Equally, the position could change if there was a change of leadership within the City Council. There would be mechanisms in the legal agreement with regard to termination of the Trust. Mr Cooke advised that governance of Tullie House could be taken back in-house and if funding was removed there would need to be negotiations between the Council and the Trust.

- A Member was pleased to see that staff were to be transferred under TUPE arrangements. Would new staff employed after the transfer be employed under the same terms and conditions? What are the views of staff on possible problems with the pension scheme?

Mr Cooke advised that they would be employed under comparable terms and conditions and that they would have the same salary and entitlements. The Board would need to consider whether to introduce a new pension scheme for new employees. However that would not be a final salary scheme. He was confident that the scheme would meet the test of compatibility.

Ms Wade advised that she had held regular meetings with staff to ensure they were updated with regard to pensions and the continuation and sustainability of Trust status.

- Would the new Chief Executive be a salaried post? Would other Board members be salaried? And would that person be in post by the formation of the new Trust?

Mr Cooke advised that the Board were not remunerated but that there was an issue around expenses to consider. The Chief Executive would be salaried but that salary had not been determined. Mr Cooke explained that it would be difficult to start the recruitment process until the project had the Council's approval. However, the job description had been written and the Board had appointed people to work with if it goes ahead so that things can move quickly following approval.

- How will the relationship with the Trust and the City council be developed?

Mr Cooke explained that the Shadow Board and the City Council had worked well together, both with Members and officers. There would be Members on the Trust Board and reporting of PIs as well as regular meetings of the Trust Audit Committee and officers of the City Council.

Mr Crossley stated that with Members of the Council on the Board there would be open accounting with regard to PIs and reporting on future plans. Members of the Board would also attend scrutiny meetings. Those details would be included in the structure when it was developed.

RESOLVED – 1) That the risk and mitigation strategy be presented to the Resources Overview and Scrutiny Panel on 7 December 2010 and that this is also circulated to Members of the Community Overview and Scrutiny Panel.

2) That the Panel recommends to the Executive that approval is only given on the satisfactory outcomes of the outstanding issues stated in the report

3) That the Shadow Board present its ideas on the admissions scheme

4) That there be a reasonable time period before a progress report is brought to the Community Panel

5) That the Chair of the Resources Overview and Scrutiny Panel be requested to invite Members from this Panel to the meeting on 7 December 2010.