

## PLYMOUTH CITY COUNCIL

**Subject:** Ernest Brock Home for the Aged Charity  
**Committee:** City Council  
**Date:** 22 June 2015  
**Cabinet Member:** Councillor Penberthy  
**CMT Member:** David Shepperd, Head of Legal Services  
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**Ref:** I488/SC  
**Key Decision:** No  
**Part:** I

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### **Purpose of the report:**

The trustees of the Ernest Brock Home for the Aged Charity have asked the Council and the Lord Mayor to agree to the release of their respective rights to nominate persons for appointment as trustees.

This would enable Plymouth Community Homes (PCH), at the request of the present trustees, to apply to the Charity Commission to be appointed as sole corporate trustee and for the current trustees to retire. The Trust would then also apply to the Charity Commission for a scheme to amend the Trust's objects so they are broadly compatible with PCH's social housing objects. Legal advice obtained by the trustees provides this would be the best way to resolve existing governance issues and take the Trust forward.

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### **The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:**

**Co-operative Values:** The grant of consent demonstrates how the Council can co-operate and work with charity and public sector partners to facilitate the future operation and success of the charity.

**Caring Plymouth:** The grant of consent will enable the continued provision of residential accommodation to persons in need, including the aged.

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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:**

Financial and resource implications are minimal though there would be administrative costs savings within the Democratic Support Service and Legal Service as the council would no longer have any involvement in the appointment of trustees to the charity.

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**Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:**

To grant consent to the release of the nomination rights will ensure continued provision of secure residential accommodation to persons in need, including the aged

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**Equality and Diversity:**

Has an Equality Impact Assessment been undertaken? Yes

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**Recommendations and Reasons for recommended action:**

Recommendation: To approve the grant of consent to release the rights of the Council and the Lord Mayor to nominate persons for appointment as Trustees to the charity.

Reasons: To ensure the compliance by the charity with the requirements of the Trust and to regularise the administration of the charity to ensure continued provision of secure residential accommodation to persons in need, including the aged.

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**Alternative options considered and rejected:**

To refuse consent to the release of the nomination rights of the Council and Lord Mayor. Rejected on the basis that legal advice obtained by the Trust recommends this course as the best way in which its interests can be furthered.

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**Published work / information:**

**Background papers:**

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7
Legal advice to the trust		x			x		x		

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**Sign off:**

Fin	Djn/ 1415 .48	Leg	SC/I 488	Mon Off	DVS 1488	HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes / No													

## **Ernest Brock Home for the Aged – Proposed Release of Trustee Appointment Rights**

### **I. Introduction**

- 1.1 The above charity was originally set up pursuant to the will of Ernest Brock dated 3 April 1947. The trustees comprise 2 persons nominated by Plymouth City Council and 1 person nominated by the Lord Mayor. There is no provision in the will or other governing documents for trustees to be appointed in any other way.
- 1.2 The annual income of the Trust must be used (i) to pay a sum not exceeding £50 to provide tea at Christmas for poor children residing in Plymouth, (ii) to pay a sum not exceeding £50 to provide a smoking concert for poor men aged over 60 residing in Plymouth and (iii) to apply such of the balance as the trustees see fit for the benefit of the aged and deserving poor residing in Plymouth. Any unapplied income must be accumulated and added to the capital of the Trust.
- 1.3 The trustees have the following relevant powers under the Will:
  - (i) to purchase buildings within or near Plymouth suitable for use as Almshouses or to purchase land in that area and to erect suitable buildings thereon as Almshouses (to be named the ‘Ernest Brock Almshouses’) for use as rent-free residences for the aged and deserving poor residing in Plymouth;
  - (ii) to make regulations for the management of the said Almshouses and for the selection of candidates for residence;
  - (iii) to set apart such part of the trust fund as shall be sufficient out of the annual income to provide for the donations described in paragraph 1.2 above and for the upkeep of the Almshouses including if they think fit the provision for a resident caretaker.
- 1.4 Pursuant to the provisions of a charity scheme dated 8 September 1989 the trustees have the power at any time to apply the whole or part of the property of the Trust in or towards providing land and buildings to be settled upon trust for use as a home for occupation by aged and deserving poor persons who are inhabitants of Plymouth (with preference for inhabitants of Valletort Ward).
- 1.5 Pursuant to the provisions of the Charity Scheme the trustees entered into an agreement with the Council dated 16 July 1990 under which the Council and the trustees agreed to jointly develop land at Vauxhall Street, Plymouth as a block of sheltered housing accommodation. The trustees agreed to contribute £472,876 from the Trust’s funds for the cost of the development. In return the Council agreed to grant to the trustees a lease of seven units of sheltered accommodation.
- 1.6 Following the development of the Vauxhall Street site which was named ‘Brock House’, the parties entered into the Lease dated 20 April 1993 for a term of 125 years at a peppercorn rent (plus insurance and service charge). The Lease was in fact granted for eight of the 33 units. The number of units subject to the Lease represented the value of the Trust’s contribution to the development of the site.
- 1.7 Brock House now forms part of the Housing Stock transferred to Plymouth Community Homes. Following the transfer, PCH assumed the management and administration of the charity (save for the appointment of trustees which has been retained by the Council) and is now the landlord under the Lease of the 8 units.

## **2. Legal Advice received by the Trust**

- 2.1 Legal advice received by the trust has identified that the governance arrangements and objects of the trust require to be updated to enable the trust to achieve its purposes going forward.
- 2.2 An appraisal carried out by the trust's legal representatives has identified various options for resolving these issues which are set out in paragraph 3 below.

## **3. Proposed Way Forward**

- 3.1 The appraisal provides there are 2 options for updating the governing arrangements of the Trust being either to retain the Trust's existing charitable objects or to change these objects.
- 3.2 Retaining the existing objects would mean that PCH would need to put in place amended criteria to be met by potential occupants when units become available so as to comply with the power of the trust in paragraph 1.3(i) that such persons fall into the classification of 'aged and deserving poor'
- 3.3 The legal appraisal has provided though that the recommended way forward would be for the charitable objects of the Trust to be amended so as to be broadly compatible with PCH's social housing objects and for the express link to Almshouses to be removed. The amended object required by the trustees would be 'to provide housing for those in need by reason of old age and poverty in Plymouth and the surrounding areas'. PCH's object is to provide housing, accommodation and assistance to help house people and associated facilities and amenities for poor people or for the relief of aged, disabled (whether physically or mentally) or chronically sick people. These respective objects are now compatible
- 3.4 The appraisal also recommends that Charity Commission consent is also requested for the two gifts of £50 referred to in paragraph 1.2 above to be removed as either too small to be of use or alternatively no longer charitable.
- 3.5 To proceed in accordance with 3.3 above the Trust would need to apply to the Charity Commission for a scheme to amend the charitable objects of the Trust and it is a matter for the commission to decide whether to grant consent to the application or not.
- 3.6 The legal advice received also indicates that in order for PCH to effectively deal with the Trust's assets and to resolve the current governance issues it should apply to the Charity Commission to appoint it as sole corporate trustee of the Trust by way of a scheme. By doing this, PCH would automatically gain trust corporation status upon appointment. This means that it would be able to give good receipt for capital assets belonging to the Trust. It is worth noting here that the Trust would remain in existence in its own right and not be subsumed in PCH, though it would no longer be regulated by the Charity Commission but instead by the Homes and Communities Agency by reason of the link to PCH. However, the Trust would continue to be charitable and subject to charity law rules.

- 3.7 The trustees wish to proceed in this way and have been advised that the Trust's governing documents would also need to be modified so as to be fit for purpose. This could be effected by way of a resolution of the trustees which would need to be filed with the Charity Commission, though the commission's consent is not required. The modification to the governing documents would need to include a new method or process for appointing Trustees and this change could only be implemented if the Council's and Lord Mayor's consent was given to the release of their respective rights to nominate persons for appointment as Trustees.
- 3.8 The Trustees have requested the Council's and Lord Mayor's consent to the release of their respective rights to nominate persons for appointment as Trustees.