

Policy Group – 17 October 2018

Timson Cottages

1. Purpose of report

To seek approval to take the necessary steps to create the Timson Cottages Trust.

2. Summary

- 2.1 In light of the decision on local government reorganisation, at its Annual Council meeting on 8 May 2018 the Council considered a report on a policy for the transfer of assets to parish and town councils.
- 2.2 As part of the discussion on the future of the Timson Cottages at Langton Matravers, the Solicitor to the Council provided Members with a brief outline of the legal issues that required further investigation to ensure that there was no impediment to Council transferring the cottages to the Parish Council. Members expressed their strong support for the principle of the proposed transfer, but acknowledged that there was a need to ensure that this was done lawfully. Members therefore resolved that a further report be brought to Council via Policy Group on the future of the Timson Cottages once the Solicitor to the Council had advised on a mechanism for transfer to the Langton Matravers Parish Council, in line with the wishes of the Council (Min 17(4).18/19 refers).
- 2.3 Advice has been sought from Counsel as to the status of the Timson Cottages and he has advised unequivocally that there is no trust; as advised previously by the Solicitor to the Council, the condition of the will for the transfer of the cottages to the Council was satisfied when the Council entered into the bond. The amount of the bond, £15,000, represents the full extent of the Council's liability in the event that the Timson Cottages were not used to house elderly people free of charge.
- 2.4 Counsel has suggested that it may be possible to maintain the spirit of the bequest by creating a trust. He says that in his opinion it seems improbable that Mrs Timson intended to benefit only the limited class of elderly people who have sufficient independent resources to pay the voluntary contribution which is currently taken from them. Without that voluntary contribution, the Council cannot provide the accommodation to elderly people without using its separate funds. A wider spectrum of people could be benefitted if the Council could charge a rent. In that case tenants who are not of independent means could be helped by housing benefit.
- 2.5 Creating the trust as suggested would enable local trustees to administer the Timson Cottages while preserving the thrust of Mrs Timson's wishes.

3. Recommendation

- 3.1 A report is prepared recommending that Council agrees that:
- 3.1.1 the Timson Cottages should be the subject of a trust for the provision of housing accommodation for persons who are homeless or in housing need and have a local connection with the parishes listed in paragraph 5.9;

3.1.2 the Timson Cottages be transferred to the trustees on completion of the trust deed; and

3.1.3 approval of the final terms of the trust and the identity of the persons to be the trustees be delegated to the General Manager – Public Health and Housing in consultation with the Leader of the Council and the ward member for Langton Matravers.

4. Policy issues

4.1 How will this affect the environment, social issues and the local economy

4.1.1 The creation of the trust will allow the Timson Cottages to be managed more locally and hence effectively. Opening up the beneficiaries of the trust will also increase the number of people who are likely to be most in need of accommodation.

4.2 Implications

4.2.1 Resources

The proposal will require the use of specialist solicitors. It is proposed the Council's legal costs are met from the Council's reserves.

4.2.2 Equalities

The proposed policy has no impact on people with protected characteristics.

5. Further information

5.1 The Timson Cottages in Langton Matravers are two small listed cottages. Mrs Timson bequeathed the Timson Cottages and her residuary estate to the Council "Provided that such Council shall enter into a Bond or Covenant satisfactory to my Trustees by which such Council will covenant to use my freehold property known as [the Timson Cottages], Langton Matravers...for the purpose of providing accommodation free of any charge for old people and the income from my residuary estate for the benefit of such old people residing within [Purbeck] and ...not without the written permission of my Trustees to sell or dispose of in any way my...freehold property but to continue to use such property for the benefit of the old people so long as they are able to do so...."

5.2 When Mrs Timson died in 1979 her executors approached the Council. The Chief Executive reported the approach to the Policy and Resources Committee saying that "Without doubt these two cottages would fetch an attractive price on the open market." The Policy and Resources Committee in February 1980 recommended that the Council accept the bequest with gratitude and authorised the Chief Executive to negotiate with the trustees the actual terms and conditions. In doing so the Committee was anxious to ensure that no cost for the upkeep of the dwellings fell upon the general ratepayer. The recommendation was accepted by Council.

5.3 The negotiations resulted in the Council entering into a bond with the trustees of Mrs Timson's estate. The terms of the bond are that the "Council shall use the freehold property known as [the Timson Cottages], Langton Matravers...for the purpose of providing

Item 8

accommodation free of charge for old people and the income from her residuary estate for the benefit of such old people residing in the district of the ...Council and that the...Council shall not without the written permission of the...trustees sell or dispose of in any way the...freehold property but continue to use such property for the benefit of old people PROVIDED ALWAYS THAT the demolition of the...cottages and the building on their site of accommodation sufficient to house two units of two persons and the provision of accommodation for four old persons free of charge in such rebuilt accommodation shall be deemed to be a sufficient performance by the Council of its obligation under this Bond”.

- 5.4 By an assent dated 6 May 1980 the freehold of the Timson Cottages was transferred to the Council subject only to a deed of grant dated 17 January 1960 in respect of a right for the adjoining owner to erect and maintain a lean-to roof and vent on the eastern side of the property. There were no covenants or other restrictions.
- 5.5 Since then the Timson Cottages have been managed by a committee which includes members of the Parish Council and the District Council. The tenants do not pay rent, but make monthly voluntary contributions which have met the maintenance needs of the properties.
- 5.6 In view of Council's previously expressed wishes it is proposed that a trust is created which comprises the Timson Cottages. The essence of a trust of land is that the formal title to the land (the 'legal estate') is separated from the underlying ownership (the 'equitable interest' or 'beneficial interest'). Accordingly, the assets, or property in this case, are placed under the control of a trustee for the benefit of a beneficiary, or for a specified purpose. A trust has the following characteristics:
- 5.6.1 The trust assets constitute a separate fund and are not a part of the trustee's own estate.
- 5.6.2 Legal title to the trust assets stands in the name of the trustee, or in the name of another person on behalf of the trustee.
- 5.6.3 The trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law.
- 5.7 As the Council owns the Timson Cottages free from incumbrances or other restrictions, creating the trust simply requires the Council to appoint the trustees and to transfer the Timson Cottages to the appointed trustees. The trust is constituted on completion of the trust deed and the transfer.
- 5.8 To a large extent literally, who the Council appoints as trustees is a question of who does the Council trust to manage the trust in the best interests of the beneficiaries. A parish council may however only accept, hold and administer a charitable trust for the benefit of the parish. So whether the Parish Council could be appointed would depend in part whether the beneficiaries of the trust were to be limited to those with a connection to Langton Matravers. This in turn may be influenced by the need to ensure that the trust can pay for itself and cover its costs. The narrower the range of potential beneficiaries the more likely that one or both Timson Cottages could be vacant.
- 5.9 Advising on the creation of trusts is a specialist area and it is proposed that external solicitors are appointed. However, subject to any specialist advice to the contrary, the

Item 8

objects of the proposed trust would be the provision of housing accommodation for those who are homeless or in need of housing with a connection with the parishes of:

5.9.1 Affpuddle and Turnerspudde

5.9.2 Arne

5.9.3 Bere Regis

5.9.4 Bloxworth

5.9.5 Chaldon Herring

5.9.6 Church Knowle

5.9.7 Coombe Keynes

5.9.8 Corfe Castle

5.9.9 East Holme

5.9.10 East Lulworth

5.9.11 East Stoke

5.9.12 Kimmeridge

5.9.13 Langton Matravers

5.9.14 Lytchett Matravers

5.9.15 Lytchett Minster and Upton

5.9.16 Morden

5.9.17 Moreton

5.9.18 Steeple with Tyneham

5.9.19 Studland

5.9.20 Swanage

5.9.21 Wareham St. Martin

5.9.22 Wareham

5.9.23 West Lulworth

5.9.24 Winfrith Newburgh

5.9.25 Wool

5.9.26 Worth Matravers

- 5.10 The parishes have been chosen as the basis for identifying beneficiaries because were the trust to be set up by reference to Purbeck District Council, the continuity provisions in the re-organisation orders, would mean that this would be read as a reference to Dorset Council after 1 April 2019.
- 5.11 The proposed trustees could reflect the make-up of the existing management committee or alternatively, reflect the parishes from which beneficiaries may be drawn.
- 5.12 To ensure flexibility in the drafting of the trust deed to respond to any specialist advice, a delegation is requested.

Background papers:

There are none.

For further information contact:-

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