

# **Localism Act 2011: Assets of Community Value Submission of Bid, Ealing Town Hall, W5**

## **Proposal by Ealing Performance + Arts Centre Ltd**

### **Summary**

This proposal is for the removal of the area of the Victoria Hall Trust from the planned lease of Ealing Town Hall to Mastcraft Ltd. Alternative arrangements are proposed which would ensure a continuation of the Trust by operation of the area under an independent Trustee as a community arts centre. This is submitted as an application for a Community Asset Transfer to act as satisfaction of a bid by CEPAC for transfer of the same area as an Asset of Community Value, for which notice of an intended bid was lodged on 21<sup>st</sup> June 2018.

The document sets out how the proposal complies with approved national and local strategies and planning policy. It is seen as a key element in enhancing the attraction of the town centre as a cultural and leisure “destination”. It explains how an arts centre for the benefit of the wider community in Ealing could be established to operate the Trust’s assets profitably, with significantly higher revenues than those obtained by the Trustee over the past five years.

It includes a plan to clarify and settle the extent of the Trust’s property, by the Council transferring to it the areas of doubt to the immediate north and east of the Victoria Hall through a Community Asset Transfer. The plan proposes how the full area can then be redeveloped so as to be used to best effect. This includes obtaining charitable capital grants of around £2.1m, which will not adversely affect the Council’s or the Trust’s revenue whilst removing any administrative burden on the Council having to act as Trustee.

The Halls would run as an independent community centre with separate professional management. A professionally produced business plan demonstrates that more positive management could be expected to be producing gross income at least 50% higher.

Significant profits could be achieved to provide for the long term maintenance of the Grade II listed building. This would remove the need for any further revision to the Trust Deed by a *cy prè*s scheme to transfer any of its assets, which is neither necessary nor desirable.

The Trustee has not in the past managed the asset in the interests of the Trust. Instead, a newly reconstituted and independent Trustee body should be appointed to develop and manage the property as a community arts centre which would operate in pursuance of the Trust’s Objects.

Finally, it proposes that these arrangements be agreed and initiated without any further delay, so that a new centre can be fully operational before the end of 2020.

## Introduction and background

1. This proposal is made to the London Borough of Ealing (LBE) for the future ownership and management of the property covered by a charitable Trust Deed dated 6<sup>th</sup> November 1893 (the Trust) and known as the Victoria Hall and its related spaces (defined later herein and for brevity referred to as “the Halls”). It is in substitution for a bid to acquire part of the Asset of Community Value listed as Ealing Town Hall, W5 under the provisions of the Localism Act 2011.
2. The proposal is to enable conversion of the Halls for use as a community arts centre in furtherance of the objects of the Trust. It is made by CEPAC (the Campaign for an Ealing Performance + Arts Centre) on behalf of Ealing Performance + Arts Centre Ltd (EPAC) to LBE, which as Trustee is the owner of the property.
3. On 27<sup>th</sup> July 2016 Ealing Town Hall was listed as an Asset of Community Value. On 19<sup>th</sup> December 2017, the functions of Trustee were delegated to LBE’s General Purposes Committee (the GPC). On 15<sup>th</sup> March 2018, the GPC approved a proposal from LBE Officers that LBE should apply to the Charity Commission for a *cy près* scheme to allow LBE to dispose of the Halls through part of a long lease on the whole of Ealing Town Hall to Mastcraft Ltd. On 9<sup>th</sup> May 2018, following the expiry on 10<sup>th</sup> February 2108 of the original ACV Protected Period, LBE gave a Further Notice on Intended Disposal. On 21<sup>st</sup> June 2018, before the expiry on 22<sup>nd</sup> June of the new Interim Moratorium Period, CEPAC submitted a Notice on Intention to Bid before the expiry of the extended Full Moratorium Period on 10<sup>th</sup> November 2018. This proposal is now submitted before that statutory deadline, in substitution for a formal ACV bid.
4. The following sections deal with:
  - CEPAC and Ealing’s Arts Policy
  - The Trust Deed
  - Extent of the Trust property
  - Proposed development of the Halls
  - Operation of the Halls
  - Finance: a viable business model
  - Finance: initial capital requirement
  - Timing
  - Future governance
  - Other miscellaneous conditions

## CEPAC and Arts Policy for Ealing

5. CEPAC, the Campaign for an Ealing Performance & Arts Centre, is the operating name of Ealing Performance & Arts Centre Ltd (EPAC). EPAC was set up in July 2010 as a private company limited by guarantee with no share capital. Its registered number is 07316497 and it has HMRC charity approval under ref: XT39308. Its object was to be the vehicle for the presentation and development of a plan for the setting up of an arts centre in the Town Hall, and began this work with a grant from LBE to prepare a business plan, which was submitted in October 2010.
6. On 3 February 2011 LBE’s Overview & Scrutiny Committee considered the 2010 EPAC plan but concluded that it involved too much loss of Council control of the Town Hall and decided not to pursue it. Instead it referred the future of arts provision in the borough to investigation by a

Scrutiny Arts Panel, which produced a report in March 2012. EPAC then reviewed its targets to be more in line with the views of the Panel, which made several recommendations mainly based on the Council acting as a facilitator and enabler rather than as a principal.

7. EPAC changed its operating name to CEPAC and clarified its activities to concentrate on finding alternative sites for an arts centre with a multi-purpose auditorium suitable for larger professional or semi-professional events such as concerts, dance and comedy as well as conferences. This was – and is – seen as a key element in enhancing the attraction of the town centre as a cultural and leisure “destination” for the whole sub-region as well as the borough, and contribute to its revitalisation in line with national policy, the London Plan and Ealing’s strategic objectives and plans. Details of these policies are in Appendix 1.

### The Trust Deed

8. In October 2014, LBE policy changed and it was decided to seek to dispose of the Town Hall. In 2016 Mastcraft Ltd was appointed as its preferred bidder to develop the whole of the building. During subsequent public debate, and due to investigations mainly by Ealing Voice, a local group, the existence of the Trust Deed came to light. Ealing Voice then successfully applied for the whole building to be listed as an Asset of Community Value, as noted above. LBE sought further clarification of the legal position, which eventually concluded that the Trust Deed was charitable and that the full Council was responsible for its administration. On 19<sup>th</sup> December 2017, these functions were delegated to LBE’s General Purposes Committee, which has met just once in this capacity, on 15<sup>th</sup> March 2018. The history of developments up to that date is recorded in the Officers’ report to that Committee (Appendix 2).
9. Meanwhile, negotiations between CEPAC and landowners of several sites in central Ealing have not produced any alternative site for a community arts centre, as had been hoped. In the light of developments relating to the existence of the Trust, CEPAC believes it is appropriate to revisit the potential use of the Halls to meet its objectives as well as those of the Trust. Although the Trustees agreed in March that Officers should prepare a *cy præs* scheme to propose to the Charity Commission to replace the existing (and amended) objects of the Trust, no alternative has been submitted. It also appears from public statements by the Director of Mastcraft that inclusion of the Halls is not essential for their plan, appropriately amended, to be able to proceed.
10. A decision by the Charity Commission on whether the objects of the Trust should be amended is also awaited, pending submission of a *cy præs* scheme. It would appear however that by itself the change suggested by LBE, which has been subject to public consultation, could proceed if the Halls are omitted from any sale of the lease of the remainder of the Town Hall, and are left to be operated as a separate entity under the Trust. The Trust’s object would then read:

‘For the public benefit the provision and maintenance of a hall for the use of the inhabitants of Ealing without distinction of political, religious or other opinions, including use for:

- (a) meetings, lectures and classes, and
- (b) other forms of recreation and leisure-time occupation.’

An outline of a *cy præs* scheme was submitted by LBE to the Charity Commission on 29 October but has not been subject to any public consultation. CEPAC has not had any opportunity to comment and it is not dealt with here.

### Extent of the Trust property

11. Apart from the need for clarity to allow redevelopment of the adjacent parts of the Town Hall, there is an obvious necessity for the boundaries of the Victoria Hall itself to be clear, because of its status as a Grade II listed structure. Research on this by the Council's archivist and local historian, Dr Jonathan Oates, was commissioned by LBE in early 2018 but did not reach any firm conclusions. CEPAC's own investigations, include discussions with LBE's former architect, Gavin Leonard, show that the best available drawings which define the original boundaries of the Halls are in a plan by the Corporation of Ealing's Engineer and Surveyor, an extract from which is contained in Appendix 3. The plan, dated 1902, is contemporaneous with the 1893 Trust and shows spaces described as the Victoria Hall totalling some 766m<sup>2</sup> (8,245 sq ft)..
12. Later plans show additional spaces to the north and east linked to the main hall. These are described in a plan dated 2003 (Plan 2 in Appendix 3) as 'Bar' and 'Artists'. Together they add some 82 m<sup>2</sup> (884 sq ft), excluding toilets and circulation space. It is not clear when these areas were built, and no formal transfer of them to the Trust can be traced though they are obviously intended to serve the Victoria Hall and serve no independent purpose.
13. At present, the principal access to the Halls is that afforded by the main entrance, foyer and staircase at the west end of the Town Hall building. There are also stairs directly to ground level to the north of the building (in what is now known as Victoria Walk), which serve as an emergency exit. As with the rooms mentioned above, they serve only the Victoria Hall and have no separate use. At this distance in time it is not possible to arrive at any definite conclusion about whether they are strictly part of the Trust area.
14. To settle the issue of future ownership and use, it is proposed that the total ground area and buildings of the Trust should be redefined to extend as far as the boundary shown in Plan 3 in Appendix 3. The area of doubt should be conveyed to the Trust under a Community Asset Transfer, on the same terms as the Trust holds the rest of the property. This would allow for development of the Halls as a whole in accordance with the proposals which follow.

### Proposed Development of the Halls

15. It has not been possible to reconcile the figures in paras. 11 and 12 above with those defined as the 'Community Use Areas' in the draft Community Use Covenants drawn up to govern the proposed lease of the whole Town Hall to Mastcraft. Plans for these areas were omitted from the documents released under a FoI request. However, these appear to show lettable space within the Trust area of 658 m<sup>2</sup> (7,083 sq ft), out of a total of all Town Hall spaces defined as 'Community Use' of 1,112 m<sup>2</sup> (12,616 sq ft).
16. CEPAC's space requirements for a community arts centre were drawn up as part of its feasibility study commissioned in 2014<sup>1</sup> and updated in 2017. Table 4.4.7 in that report (Table 1 below) showed that the equivalent lettable space to meet the requirements of a viable business plan for a centre total 635 m<sup>2</sup> (6,190 sq ft), out of a total area of around 1,270 m<sup>2</sup> (13,670 sq ft). In broad terms, therefore, although the exact configuration will clearly be different, the Halls offer a sufficient gross space to meet the main needs of the CEPAC plan.

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<sup>1</sup> EALING PERFORMING ARTS CENTRE Development Review & Feasibility Study, Artservice April 2015

## 17. Table 1: Space Summary

Facility/Space	Sq.m.	Special Requirement
Main auditorium	275	<i>Seating approx 300 – 320</i>
Stage and backstage areas	120	<i>Not for drama production</i>
Dressing rooms	60	<i>For up to 20 and access to overspill</i>
Dance/rehearsal studio	120	<i>With sprung floor - can be used for studio perfs</i>
Function/meeting room	60	<i>Possibly large space with partition</i>
Office	20	<i>Administration/staff/volunteers</i>
Toilets	65	<i>Including backstage/staff</i>
Storage	50	<i>Technical/admin/marketing/cleaning/FOH/cafe/bar</i>
Cafe/bar including servery	220	<i>Doubles with part of foyer space</i>
Sound and lighting control room	15	<i>Possibly with digital projection</i>
Foyer/box office	40	<i>With back room</i>
Kitchen	10	<i>For staff and volunteers</i>
General circulation	164	<i>@ 10% of above</i>
Plant & lift(s)	40	
Refuse area	10	
<b>Total</b>	<b>1,269</b>	

18. Table 1 shows that work would be needed to modify or provide the rest of the space necessary to create a self-contained, stand-alone viable arts centre, with its own separate access. This is illustrated in Appendix 4. After the addition of around 200m<sup>2</sup>, spaces could be provided as set out in Table 2 below. Work would be needed to separate and renew essential services such as power supply, heating and drainage. Professional estimates show that this would cost in the region of £2.1m (2018 prices). Their exact extent would require a full survey, but we believe that the total works can be accommodated at a cost substantially less than a new build, which the feasibility study (para. 4.5) estimated at a total of £6.25m (2015 prices).

## 19. Table 2: Net indicative space after conversion

Facility/Space	Sq.m.	Notes (all areas approx. net)
Main auditorium	280	<i>Flexible seating for between 300 – 350</i>
Stage and backstage areas	112	<i>Not for drama production</i>
Dressing rooms	24	<i>Potential for expansion</i>
Dance/rehearsal studio	152	<i>Sprung floor. Incl 24m<sup>2</sup> dedicated storage space</i>
Function/meeting room	170	<i>One large space with partition(s) plus one smaller</i>
Box Office/admin	40	<i>Administration/staff/volunteers</i>
Toilets	35	<i>Including staff</i>
Storage	25	<i>Not incl bleacher seating, provided in auditorium</i>
Cafe/bar incl kitchen/servery	120	<i>Doubles with part of foyer space</i>
Foyer/exhibition space	108	<i>Over two floors, part available for meeting space</i>
General circulation (stairs/lifts)	230	<i>Includes piano lift</i>
Refuse area	9	
<b>Total</b>	<b>1,305</b>	

## Operation of the Halls

20. CEPAC's proposal is that the Halls should be an independent operation with separate professional management. This would be run as a proactive community centre, creating its own programme of activities as well as providing opportunities for letting to local voluntary organisations and for occasional commercial use. As well as being in line with Ealing's policy generally, our professionally commissioned studies show that there is an unsatisfied demand for an operation of this type, which could result in a significantly higher level of usage of the space than at present.
21. There have been no separate accounts produced in recent years for the Trust's operations. However data in the appendix to the 15 March report to the Trustees suggests that over the past five years there has been an average gross income of £257,000, producing a net operational surplus of £57,000 per annum. These revenues are low when compared to similar but more actively managed organisations. Although there are no figures for occupancy rates, the income level indicates they are also low. This is supported by casual observation and anecdotal evidence, which suggests that recently lettings may have fallen, due partly to increases in prices. This underlines the difficulty experienced by the Council in generating sufficient revenue to ensure the Halls operate on a sufficiently profitable basis to allow reserves for maintenance of an historic building.
22. Past management of the Halls appears to have taken the approach of a passive letting agency. Similarly sized facilities could with more positive management be expected to be producing gross income at least 50% higher, as has been experienced in places where there has been more innovative and active management. The assertion in the Officers' report that the Halls benefit from economies of scale by being incorporated into the Council's overall management is also contrary to experience elsewhere, and overlooks the fact that most community arts centres benefit from considerable amounts of voluntary effort, with access to financial and other support available to charitable bodies from which a local authority cannot benefit.

## Finance: a viable business model

23. The Artservice feasibility study provided a potential operating plan to meet the optimum likely demand as already investigated by CEPAC's previous marketing study<sup>2</sup>, which was further updated in 2017. The proposed business model was based on Artservice's knowledge of a wide range of successfully operating arts centres in a variety of UK locations, and set out details of the range of activities relevant to the local environment and circumstances of Ealing within its wider hinterland.
24. A summary of indicative financial estimates was contained in Appendix VII of the Artservice report. This is reproduced below as Table 3. It can be seen that, taking the fairly stringent assumptions of the report, an arts centre along the lines suggested as the optimum for the local conditions could be expected to have reached break-even point for its third full year of operation. Thereafter, profits would be generated that could be placed in reserve for maintenance of the fabric of the building.
25. Artservice concluded that the operating viability of the centre would be heavily dependent on the successful acquisition of a site, achievement of the external funding targets (which at the

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<sup>2</sup> *Ealing Arts Centre Demand Survey*, Purple Marketing, 2013

time – 2015 – were acknowledged to be very difficult), and the support in principle of the Council, recognising that no financial backing would be forthcoming from LBE other than potential funding through planning obligation receipts (\$106 or CIL). Rather than pursuing the objective of a total new build, CEPAC has abandoned the idea of a new build, and instead re-visited its original arts centre vision and work to find an existing, more modest building that could be converted into a centre for local arts. The current proposal has taken this professional judgement into account.

**Table 3: Feasibility Study Indicative Financial Estimates (2015 prices)**

<b>SUMMARY</b>					
<b>Indicative Financial Estimates</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>INCOME</b>					
Live Performance Income	209,445	229,060	262,384	275,503	289,278
Auditorium Hires	84,000	97,335	109,803	115,293	121,058
Other Room Hire	48,250	53,998	58,774	61,713	64,798
Ticket Booking Fees	10,472	11,453	13,119	13,775	14,464
Recharges to Hirers	9,919	10,415	10,935	11,482	12,056
Bar & Café franchise/net surplus	30,960	32,508	34,133	35,840	37,632
Sales - confectionery/ice creams	3,500	3,675	3,859	4,052	4,254
Donations and fundraising	5,000	7,500	10,000	10,500	11,025
External funding	5,000	6,000	7,500	7,875	8,269
<b>Total Income</b>	<b>406,546</b>	<b>451,944</b>	<b>510,508</b>	<b>536,033</b>	<b>562,835</b>
<b>EXPENDITURE</b>					
Staffing	113,806	112,468	114,155	115,867	117,605
Live show fees	173,839	187,829	209,907	220,403	231,423
Other Supplies	2,000	2,100	2,205	2,315	2,431
Building Costs	118,750	124,688	130,922	137,468	144,341
Administration Costs	19,213	20,379	21,890	22,984	24,134
Marketing and Promotion	20,000	21,000	22,050	23,153	24,310
Contingency	5,000	5,250	5,513	5,788	6,078
<b>Total Expenditure</b>	<b>452,607</b>	<b>473,713</b>	<b>506,641</b>	<b>527,978</b>	<b>550,321</b>
<b>Net deficit/surplus</b>	<b>-46,061</b>	<b>-21,770</b>	<b>3,867</b>	<b>8,055</b>	<b>12,513</b>
Cost Reduction - no rent or rates	25,000	26,250	27,563	28,941	30,388
<b>Net deficit/surplus</b>	<b>-21,061</b>	<b>4,480</b>	<b>31,429</b>	<b>36,996</b>	<b>42,901</b>

### Initial capital requirement

26. Under the arrangements in this proposal, no transfer of the ownership of the Halls would take place, so no initial capital sum is required. In any event, even if it obtained permission to dispose of a lease of the Trust property, the Council itself could not benefit from any payment, which would accrue to the Trust. No independent valuation has therefore been sought, either of the Halls or of the external areas mentioned in para.14. However, as the time limit for a bid under the Assets of Community Value procedures expires on 12 November 2018, this proposal has been made to protect CEPAC's position as an interested party.
27. A capital sum of at least £2m would be required to carry out the development proposed in paras. 15 – 16 above. CEPAC has contacted a range of grant givers and charitable sources of low interest loans. These are set out in Appendix 6. Several of these have made expressions of interest. Further progress on specific applications for support need a firm indication that there is a commitment that the site will be available for use and development. This would be far

easier once the position of the Trust in relation to ownership of the complete site is agreed. In the meantime, CEPAC has been operating on individual donations to fund its work.

### Timing

28. The first essential step would be for LBE to recognise the desirability of transferring the Trust to a new independent Trustee, and applying to the Charity Commission to do so, in place of any alternative *cy prè*s scheme. The Trustee could then negotiate with LBE the terms for development of the Halls. The advantages of this approach are set out in more detail below, but in essence would comprise
  - a. a definite, even if conditional, undertaking from LBE to agree a Community Asset Transfer of the extra area adjoining the Halls to allow enabling development for the them to be used as a Community Arts Centre;
  - b. an outline of the terms of such a transfer;
  - c. inclusion in LBE's Infrastructure Development Plan of some initial financial support from relevant S106 or CIL receipts, to be agreed;
  - d. support for any planning application required, and for negotiations with neighbouring landowners (ie St George, Mastcraft and/or other developer granted a lease of the adjoining parts of the Town Hall), on items such as access including disabled access; and
  - e. an understanding that no other capital or revenue support would be expected from the Council for the operation of the centre.
29. It is proposed that the aim should be to reach an agreement in principle as soon as possible. This would allow LBE to modify its arrangements for the remainder of the Town Hall with Mastcraft or any other developer. It would also enable CEPAC or the Trust to proceed with its formal applications for grant and loan finance.
30. Pending a formal transfer, we expect current use of the Halls to continue. However, as the scale of the work envisaged is substantial, the whole of the facility would not be available for use for up to two years, ie until the end of 2020. Accordingly there would be no continuity of operation and it would be necessary for LBE to terminate all its present contractual arrangements, including those with staff. We would not expect TUPE to be applicable.
31. In the interim development period, the Trust would concentrate on obtaining all the necessary finance. It could also operate a 'skeleton' arts centre working with other operators of space in the Ealing area central to co-operate on joint operation and maintain some limited facilities for local groups. These ideas have yet to be developed, though some initial discussions have taken place.

### Future governance

32. The arrangements since December 2017 for supervision of the Trust are not satisfactory. The Council's General Purposes Committee, which now sits as the Trustee body, is in effect an arm of the Council and is not operating in the interests of the Trust. Its Chair is a political rather than an independent appointment; its members are chosen for party political reasons, not for the skills and experience they could bring to supporting management of the Trust's affairs. They have met only once in their role as Trustee, and have not been kept informed by Officers on the progress of discussions with the Charity Commission about past and future control, which is also under question due to alleged past mismanagement of the accounts.

33. Although uncertainty remains over whether or not LBE has the power to dispose of the Trust property, CEPAC believes that, whether or not such a disposal is legally possible, the correct way forward to ensure performance of the Trust's Objects is for the Halls to be removed from the proposed lease arrangements between LBE and any appointed developer for the whole of Ealing Town Hall and for control to be passed to a new Trustee body. This should be either to a new independent set of Trustees with the Council retaining ownership, or, if a transfer of the lease is ruled appropriate, to a newly established not-for-profit community charitable organisation. If necessary, a new Trust Deed should be drafted which would continue the intentions of the original. The make-up of such a new Trustee body is suggested in Appendix 5.

#### **Other miscellaneous conditions**

34. Apart from the outstanding issues mentioned which still have to be resolved, other conditions need to be met in order to reach a satisfactory agreement. These include but are not necessarily limited to those set out below.
35. **Planning permission.** LBE in its role as landowner will assist in obtaining the necessary planning permission. This will include questions relating to the Hall's Grade II listing and a decision on whether any Environmental Impact Statement is needed.
36. **Third party agreements.** LBE will assist with any negotiations necessary with third parties including but not limited to Mastcraft Ltd and St. George on matters concerning access or other matters of common concern.
37. **Public consultation.** LBE will co-operate in conducting any necessary negotiations with the Charity Commission, including meeting the need for any further public consultation.
38. **Access to planning obligation monies.** LBE will assist the new Trustees in the acquisition of capital funding as discussed above, by identifying and assisting in the release of any S.106 or future CIL funds available to fulfil obligations for the provision of social infrastructure in the town centre from existing or future developments.
39. **Range of uses.** Within the broad terms of any agreed amended or new Trust Deed, the Trustees and their professional management should be free to operate the Centre at their total discretion. There should be no restrictions placed on them by LBE as to the scale and proportion of any particular use, nor any limitation on the amount of commercial use if such use is deemed necessary to maintain a viable financial operation. The Trustees may, again at their discretion, agree to provide LBE with a number of priority days for Council use in any year, but at rates no lower than those available to other local community users.
40. **Provision of services.** The Trustees shall have the right to request and LBE shall provide at cost on request access to administrative and other services such as booking, staffing, insurance, running costs and wider support i.e. Legal, Finance, and Facilities Management.

**9 November 2018**