

	<p style="text-align: center;"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p style="text-align: center;"><b>CABINET</b></p> <p style="text-align: center;"><b>12 OCTOBER 2015</b></p>
<p><b>FINANCIAL MANAGEMENT OF FULHAM PALACE TRUST</b></p>	
<p><b>Report of the Leader of the Council – Councillor Stephen Cowan</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For Decision</b></p> <p><b>Key Decision: Yes</b></p>	
<p><b>Wards Affected: Palace Riverside</b></p>	
<p><b>Accountable Director: Mark Jones, Director for Finance &amp; Resources</b></p>	
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## 1. EXECUTIVE SUMMARY

- 1.1. The Audit, Pensions and Standards Committee was asked to give its views on a case made by the Fulham Palace Trust (FPT) that the Council is obliged to fund a £388,000 deficit in the pension scheme for staff that had transferred to it from the Council in 2011.

## 2. RECOMMENDATIONS:

- 2.1. The Cabinet is asked to note:
- The explanation given to the Audit, Pensions and Standards Committee by the Fulham Palace Trust was that their pensions' deficit of £388,000 was a recent discovery and that the Trustees had not fully explored the financial issues at the time the Trust was established nor taken independent financial advice.
  - FPT has therefore suggested that the Council has an obligation to cover this cost. However under the terms of the pension scheme Admission Agreement the Council has no obligation to fund the pension scheme for FPT.

- That officers revisited the arrangements because of FPT's demand but confirmed that it is explicit in Section 4 Obligations of the Trust in the Grant Funding Agreement (GFA) that: [4.1] that The Trust will: 'accept staff transferred on TUPE terms from the Council' and as the Admission Agreement to the pension scheme was signed off by FPT's Chairman, Tim Ingram, it remains FPT's responsibility.
- That in FPT's draft accounts for 2014/15 it has netted this £388,000 liability off its unrestricted funds, suggesting it is provided for.
- Council officers advise that in light of the FPT financial expertise and management available, FPT should be able to understand its liabilities and plot its income generation projections through the development of a robust business plan and fundraising strategy.

2.2. That Cabinet should not pay FPT the £388,000 demanded.

### **3. REASONS FOR DECISION**

3.1. At its meeting on 17 June 2015 the Audit, Pensions and Standards Committee received an officer report on the finances of the FPT, and listened to, and explored, the views of the Chief Executive and a trustee of FPT. The Committee heard that:

- Fulham Palace had cultural and historical significance for the borough. The Council had already invested a significant amount of money to the Palace in the form of grants of £566,000, a repayable loan of £300,000, and a boiler replacement commitment worth over £200,000.
- The Trust argued that its pensions' deficit of £388,000 would harm their ability to apply for charitable grants.
- Fulham Palace was previously operated by the Council and the pension liability related to Council employees who transferred to the Trust when it was formed.
- At the time of the transfer there was a pensions' deficit of £500,000, but by 2013 it had reduced to £388,000. The recovery period was 22 years, in line with the Council's own recovery rate.
- The original admission agreement signed by FPT had specified a 29% contribution rate to the pension scheme and explicitly stated that the Trust would take on their share of the deficit. Councillors were surprised to hear that the FPT Chief Executive had not seen the original admission agreement.

3.2. One of the founding trustees said that the trustees had been appointed by the Council and were not aware of the deficit despite three of the trustees having a financial background. It was also reported that no independent financial advice was sought at the time. Members advised that they were shocked to hear this. They noted that in February 2011, the Chair of the Trust had welcomed the new Chairman's banking and investment skills (Fulham Palace Management Board minutes of 15 February 2011).

- 3.3. The FPT Chief Executive said she believed there was a shared responsibility between the Council and the Trust as the founding trustees had not fully explored the financial issues at the time.
- 3.4. The Chair stated that the Committee recognised the cultural significance and importance of Fulham Palace in the borough. However, FPT's future claims had to be seen alongside those of other organisations, especially at a time of acute pressure on local authority resources. FPT should present any case for more financial support from the Council based on a robust business plan.
- 3.5. Members also noted that many charitable organisations had pension liabilities and it did not affect their ability to fundraise.
- 3.6. The Council is also aware that the cash impact of the deficit on FPT is less than £10,000 extra per year (as the cost changed from 29% of staff pay to 17% plus £20,000 per year). This is not regarded as onerous.
- 3.7. FPT is a viable concern and has delivered surpluses on its income and expenditure since it was formed.

#### **4. INTRODUCTION AND BACKGROUND**

- 4.1. In April 2010, Cabinet took the decision to create an independent Fulham Palace via an arms-length charitable trust. FPT was established in April 2011 and a GFA was drawn up setting out the obligations of both the FPT and the Council.

#### **5. FULHAM PALACE TRUST FINANCIAL RISKS AND ISSUES**

- 5.1. In March 2014, FPT advised the Council that they had a pensions' deficit of up to £388,000. The advice given by the council's shared services finance officers has been that the deficit recovery period is equivalent to the Council's – i.e. 22 years. The commitment to pensions, including the deficit, to be met by FPT, is currently estimated at 17% of salary costs plus £20,000 per annum, although this could change in the future.
- 5.2. FPT has subsequently expressed concern to the council about their ability to fund the pension liability for staff transferred by TUPE from the Council to the trust. The Trust has specifically requested additional financial assistance to cover this sum on the grounds that it may jeopardise future funding bids to outside bodies if such a liability is shown in the FPT audited accounts.
- 5.3. In response officers revisited the arrangements and confirmed to FPT that within the GFA, the trust took on responsibility for Palace Management and accepted staff transferred on TUPE terms from the Council on the commencement date of April 2011. It is explicit in Section 4 Obligations of the Trust in the GFA that: [4.1] that The Trust will: 'accept staff transferred on TUPE terms from the Council'.

- 5.4. Officers have advised FPT that the pension costs are an integral part of the Grant Funding Agreement and as the Admission Agreement to the pension scheme was signed off by FPT's Chairman, Tim Ingram, it remains FPT's responsibility. In the draft accounts for 2014/15 FPT has netted this £388,000 liability off its unrestricted funds, suggesting it is provided for.
- 5.5. In addition the FPT has asked the Council to consider whether a sum of £1m could be made available from section 106 sums secured from land developments as a contribution to the next phase of the palace's physical renovation and uplift. Officers and the leadership have responded to the FPT directly that sums currently secured are committed to other priorities.

## 6. COUNCIL PROVIDED FINANCIAL ASSISTANCE TO FPT

- 6.1. When operated by the Council, the annual cost of running Fulham Palace was considerable at circa £500,000. One of the main drivers for establishing a new arms-length charitable trust was to reduce the Council subsidy whilst maintaining an excellent prestigious facility and services to the public. As a registered charity, FPT has been able to take advantage of charitable discounts (such as an 80% discount on business rates) and can apply for charitable grants that would not otherwise be available to the Council.
- 6.2. The Council views Fulham Palace as an important cultural and heritage site within the borough, and in order to support it, has already made a number of loans and grants to FPT which are detailed as follows:

Year	Annual In-house cost (average)	Non-repayable payments to FPT	LBHF Saving	Repayable payments to FPT
2011/12	£500,000	£148,000	£352,000	£50,000
2012/13	£500,000	£50,000	£450,000	£0,000
2013/14	£500,000	£368,000	£132,000	£250,000
2014/15	£500,000	£0	£500,000	£0
<b>4 Year Total</b>	<b>£2,000k</b>	<b>£566k</b>	<b>£1,434k</b>	<b>£300k</b>

- 6.3. The non-repayable payments to FPT in the first 2 years were agreed contributions towards early year running costs whilst FPT was establishing a balanced budget.
- 6.4. The £368,000 payment in 2013/14 was a one off grant to allow FPT to repay a loan from Architectural Heritage Fund (AHF), taken out to refurbish the two lodges within the palace grounds so that they could be commercially let and generate much needed income for FPT.
- 6.5. The Council has also made two repayable loans to FPT since its creation. In 2011/12, the Council agreed a £50,000 interest bearing cash flow loan to help the Trust manage its first year cash flow, allowing time for a cash

balance to be built up. The loan has now been repaid in full (including interest of £1.6k).

- 6.6. The grant funding agreement requires the Council to set aside up to £250,000 of its own funds to act as a reserve for the Trust in the case of a significant and unavoidable loss. In April 2013, the Council agreed to transfer this £250,000 to FPT for them to hold as a reserve, to be held in a separate bank account. This £250,000 is to be repaid to the Council once the Trust starts to make a surplus after contributing to their reserves. No payments have been received yet, given that year-end surpluses to date have been applied to the cash flow loan referred to previously.
- 6.7. £4.6m has been spent on an extensive capital project for the enhancement and restoration of Bishops Park and Fulham Palace grounds. The works included the installation of an education centre, high quality parks play equipment for a range of ages, an enhanced lake and beach area as well restoring a number of features (such as the decorative bridge) in and around the grounds. £3.6m of this was awarded by the Heritage Lottery Fund with the remainder coming from LBHF. Although there is not a direct funding agreement between the Council and FPT, these works provide investment in the grounds within and surrounding Fulham Palace and so will generate benefits for FPT.
- 6.8. In the next five years the Council must meet its obligations to the Heritage Lottery Fund for a total of £1,036,000 for running costs, and so far £746,000 has been set aside for that. The Council is also currently in discussion with FPT for an annual contribution (expected to be circa £150,000 over the five year period) towards the remaining gap.
- 6.9. The Council made no financial contribution to FPT in 2014/15, but has provided at least £200,000 for a replacement boiler in the 2015/16 planned maintenance programme. The legal agreement with FPT placed an obligation of the Council to replace the boiler when necessary.

## **7. FULHAM PALACE TRUST FINANCIAL CONTROL AND GOVERNANCE**

- 7.1. The Chief Executive for the FPT is responsible for the Trust's financial management, supported by a dedicated finance trustee. Monthly management accounts are produced and are reviewed at the quarterly Finance, Risk and Audit Committee. This committee comprises of a small number of trustees with diverse financial, commercial and charities experience. It is chaired by the Finance trustee and attended by a Council Finance officer (as an observer, usually the Head of Finance for ELRS).
- 7.2. There have been two Finance trustees since FPT was created who have both been qualified accountants with substantial financial expertise and experience, which has been crucial in establishing the finances of the trust. FPT also employs an experienced book keeper who manages the day to day finances of the trust and prepares the management accounts and year end accounts.

- 7.3. FPT's management accounts are also reported to the quarterly Board of Trustees meeting, which is also attended by a council officer (usually the Head of Culture), as well as the Council nominated trustees.
- 7.4. Council officers advise that in light of the FPT financial expertise and management available, FPT should be able to understand its liabilities and plot its income generation projections through the development of a robust business plan and fundraising strategy. Officers have offered to assist FPT in the development of its plans and the board of trustees has recently been strengthened with the appointment of two Council-nominated trustees with strong marketing and commercial backgrounds.

## 8. FULHAM PALACE TRUST FINANCIAL PERFORMANCE

- 8.1. The restricted and non-restricted available funds as reported in the Trust's annual accounts show progress in delivering surpluses in most years:

	Balance Sheet	
	Restricted Funds	Unrestricted Funds
	£	£
2011/12	17943	10416
2012/13	53666	50536
2013/14	63326	30758

- 8.2. It is anticipated that the 2014/15 accounts, when finalised, will show a surplus on restricted and unrestricted funds. This will increase the balances shown in the table above.

## 9. EQUALITY IMPLICATIONS

- 9.1. There are no equalities implications resulting from the recommendations in this report.

## 10. LEGAL AND RISK IMPLICATIONS

- 10.1. The financial arrangements between the council and FPT must comply with, amongst other things the State aid rules. Whilst aid for the preservation of culture and heritage is subject to an exemption from the general prohibition against granting State aid, it is conceivable that any assistance that the Council were to give FPT towards paying off the pension deficit would not fall within the exemption and therefore may amount to unlawful State aid. If it was unlawful State aid the FPT would have to repay it plus interest.
- 10.2. The reason for the State aid issue arising is that FPT is active within various markets, e.g. commercial lettings; conferences, events, weddings,

etc, and that fact that the Admission Agreement was entered into on the basis that the pension fund was not fully funded.

- 10.3. Legal Implications were provided by Keith Simkins Head of Division Contracts and Employment 020 7361 2194

## **11. FINANCIAL AND RESOURCES IMPLICATIONS**

- 11.1. The financial implications of establishing FPT are set out in section 6. By being present (as an observer) at the quarterly Finance Risk and Audit Committee, the Council is able to monitor the financial performance of FPT.

- 11.2. Implications completed by: Kellie Gooch, Head of Finance – ELRS, telephone: 0208 753 2203.

## **12. IMPLICATIONS FOR BUSINESS**

- 12.1. FPT combines the role of a charity managing a heritage asset with that of being a small business within the borough. The Council wishes to see it thrive as it does all other businesses in the borough.

### **LOCAL GOVERNMENT ACT 2000** **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	None		