

MINUTES of MEETING of the MIDLOTHIAN COUNCIL GENERAL PURPOSES COMMITTEE held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 21 May 2013 at 2.00pm.

Present:- Councillors Rosie (Chair), Baxter, Bennett, Coventry, Johnstone, Milligan, Muirhead, Pottinger, Russell, Thompson and Wallace.

Apologies for Absence:- Councillors Beattie, Boyes, Bryant, Constable, Imrie, Montgomery and de Vink.

1 Introductory Remarks

With reference to the Minutes of Council of 18 December 2012, the Chair confirmed that the Meeting would be audio recorded save, owing to the ongoing consideration of data protection issues, the Hearings relating to applications for licences.

2 Order of Business

There was no change in the order of business. The Chair ruled, as urgent, supplementary correspondence in respect of Item 7(a) below.

3 Declarations of Interest

There were no declarations of interests.

4 Minutes

On a motion by Councillor Wallace, seconded by Councillor Bennett, the Minutes of Meeting of 9 April 2013 were approved as a correct record.

5 Civic Government (Scotland) Act 1982

(a) Procedure for Disposing of Applications

There was submitted report, dated 15 May 2013, by the Director, Corporate Resources, concerning the procedure for disposing of applications for licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

(b) Licensing of Metal Dealers – Consultation

There was submitted report, dated 2 May 2013, by the Director, Corporate Resources, concerning a consultation issued by the Scottish Government (SG) in relation to Metal Dealers.

In his report, the Director confirmed that:-

- (i) the licensing of Metal Dealers and Itinerant Metal Dealers was mandatory and local authorities exercised control via mandatory and discretionary conditions; the legislation imposed a number of requirements that licence holders had to comply with; and the purpose of licensing was to prevent crime and preserve public order and public safety;
- (ii) in February 2013, the SG had introduced legislation aimed at increasing greater control by adapting the exemption scheme, increasing the threshold under which licensing was not required; and during that consultation exercise, had identified a number of other actions as in need of further examination, namely:-
 - (1) to consult further on removing the exemption warrant system entirely with all metal dealers subject to licensing conditions;
 - (2) to work with the industry and others to ensure that the licensing scheme ensured appropriate and proportionate regulation without jeopardising the operation of legitimate businesses;
 - (3) in particular, to look at the requirements around retention of metal with a view to the removal of this from licensing requirements whilst retaining it as an optional condition for licensing authorities to impose on a case by case basis;
 - (4) to consider as part of further consultation whether national mandatory conditions should be set, including CCTV, identification of, recording details and checks of customers, their vehicles and the transaction; and
 - (5) to consider further the position of itinerant metal dealers within the licensing scheme.

Appended to the report were the Consultation document; and a draft response.

Decision

- (a) To note the report; and
- (b) To remit to the Director, Corporate Resources, in consultation with the Chair, the submission of a response taking into account the draft answers and any comments made by the Members.

(Action – Head of Customer Services)

Sederunt

Councillors Johnstone and Thompson joined the meeting during discussion of the foregoing item (2.13pm).

6 Trusts and Bequests – (a) Financial Position as at 31 March 2013

There was submitted report, dated 7 May 2013, by the Director, Corporate Resources, concerning the Financial Position in respect of Trusts, Bequests, Common Good Funds and Mining Community Trust Funds as at 31 March 2013.

Appended to the report were (i) the Statement of Balances as at 31 March 2013; and (ii) the criteria for the award of benefit.

Decision

To note the report.

(b) Review

With reference to paragraph 4 of the Minutes of 5 April 2011, there was submitted report, dated 13 May 2013, by the Director, Corporate Resources, concerning disbursements from the Trusts, Bequests, Common Good Funds and Mining Community Funds; and a meeting of a Short Life Working Group on 3 May 2011 after which no further progress had been made.

Appended to the report were Notes (i) of a Seminar of the Committee held on 23 February 2011; and (ii) of a meeting of a Short Life Working Group held on 3 May 2011, as shown in the **Appendix** hereto.

Decision

To note the report.

(c) Update

There was submitted report, dated 13 May 2013, by the Director, Corporate Resources, updating the position in relation to the previous considerations in respect of Trusts, Bequests, Common Good Funds and Community Mining Funds.

In his report, the Director confirmed, *inter alia*, that:-

(i) in respect of Trusts and Bequests:-

(1) the Church of Scotland General Trustees had remitted a balance of c £780 following the sale of stock in respect of the Ainslie Bequest, interest was disbursed together with interest from funds generated by the Sir Samuel Chisholm and Fraser Hogg Bequests to Poor Persons in Dalkeith; whilst there was a requirement that only the interest from the Fraser Hogg Bequest be disbursed, the Council could encroach on the “capital” sum in respect of the others; and

(2) a request for financial assistance, in the amount of £400, had been made by the Council's Community Learning and Development Section, Education and Children's Services Division towards the cost of providing lunches for the participating families from Woodburn in a "Play in the Park" summer holiday project, in Dalkeith;

- (ii) in respect of the MacFie Hall Trust, the premises were in Heriot Village and the Scottish Borders Council had consented to the transfer of the Bequest;
- (iii) in respect of Other Bequests, consideration could also be given to the transfer of the Ramsay Bequest to the Scottish Borders Council and any others with residual balances as appropriate;
- (b) Opencast Funds (i) all coaling had ceased and disbursements could only be made for the benefit of the environment in the vicinity of the Opencast Mine and the haul route to the trunk road (save for that relating to the failed Blinkbonny Drift Mine which covered also job creation in the Mayfield area);
- (ii) the position in respect of the Funds was clear and decisions could be taken to bring about their closure;
- (iii) in respect of the Funds for Gourlaw, Shewington and Newbigging Farms, the Gourlaw Sub Committee would meet to review the position;
- (iv) Scottish Coal had gone into Liquidation on 19 April 2013; and it was thought that any outstanding business would relate to the restoration of the site; and notwithstanding that, it seemed likely that an application for planning permission for the extraction of coal (10 million tonnes) would be submitted in respect of Cauldhall Moor, and whilst it was impossible to predict if the application would be granted, consideration could be given to the way in which any Fund might be operated should the question arise, all with a view to the submission of views at an appropriate stage.
- (v) in respect of Oxenfoord, the Fund would be closed; and
- (vi) in respect of Smeaton, a residual balance of £1,402.37 remained.

Decision

- (i) To note the report;
- (ii) in respect of the Bequests, etc:-
 - (1) To agree (a) in principle, that the "capital" balances be encroached upon; and (b) to seek potential beneficiaries via the Churches and other Agencies for the Ainslie, Fraser Hogg and Sir Samuel Chisholm Bequests and remitted the detailed arrangements to the Director, Corporate Resources, in consultation with the Chair;

- (2) To seek potential beneficiaries likewise for the Mrs EW Yorston, John and Margaret Haig, Cockpen Lasswade and Falconer; and Tod Bequests; and remitted the detailed arrangements to the Director, Corporate Resources, in consultation with the Chair;
 - (3) To approve the transfer of funds held for the MacFie Hall and Ramsay Burial Ground, Stow to the Scottish Borders Council;
 - (4) To approve the transfer of funds to the Council's Maintenance Budget in respect of the Allison Bequest, Loanhead; and Cranston War Memorial Fund; and
 - (5) (a) To note that a request for financial assistance funding towards a "Play in the Park" Project had been made which concerned both the bequests for the poor and the Common Good Fund in Dalkeith; and (b) to agree that the matter be considered as described at paragraph 7 below.
- (ii) in respect of the Open Cast Coal Funds:-
- (1) To await recommendations from the Blinkbonny and Gourlaw Sub Committees, as respects the disbursement of any balances;
 - (2) To remit to the Director, in consultation with the Chair and Local Members consideration of potential ways of disbursing the balance remaining in the Smeaton Fund and report back; and
 - (3) To note that the Oxenfoord Fund would be closed.
- (d) Fraser Hogg and Sir Samuel Chisholm Bequests and MacFie Hall Trust**

There was submitted report, dated 7 May 2013, by the Director, Corporate Resources, concerning the Fraser Hogg and Sir Samuel Chisholm Bequests and MacFie Hall Trust.

Appended to the report were the relative Draft Annual Reports and Statements of Income and Expenditure.

Decision

- (i) To note the report;
- (ii) To approve the annual reports; and
- (iii) To remit consideration and approval of the relative Examiners' reports and submission of the returns to the Regulator to the Director, Corporate Resources, in consultation with the Chair subject to a report back, if necessary;

7 Dalkeith Common Good Fund - Requests for financial assistance - (a) Volunteer Centre – Gardening Project; and (b) Community Learning and Development Section – Dalkeith’s “Play in the Park” Summer Project

There was submitted report, dated 3 May 2013, by the Director, Corporate Resources, concerning requests for financial assistance from the Dalkeith Common Good Fund.

Appended to the report were (i) letters, dated 27 March and 19 April 2013 from the Midlothian Volunteer Centre; and the Council’s Community Learning and Development Section of the Education and Children’s Services Division, respectively; and (ii) a list of draft conditions which could be attached to the award of benefit.

There was also submitted copy email correspondence providing supplementary information about the gardening project.

In his report, the Director confirmed that:-

- (a) the Midlothian Volunteer Centre had requested funding in the amount of £3,000 towards the cost of providing resources for a “Midlothian Growing Together” Project aimed at giving an opportunity to volunteers to participate in a gardening project at Dalkeith Country Park; and
- (b) the Council’s Community Learning and Development Section of the Education and Children’s Services Division sought funding in the amount of £400 towards the cost of providing lunches for the participating families from Woodburn in the summer holiday project “Play in the Park” in Dalkeith.

In respect of the principles involved, the Clerk commented that any disbursements should be made unequivocally for the benefit of the inhabitants of the former burghal area of Dalkeith.

Decision

- (i) To decline the request from the Volunteer Centre on the basis that there were other grant aiding schemes available but to remit to the Director, in consultation with the Chair and the Local Members to reconsider the request if all other approaches failed; and
- (ii) To approve the disbursement of £400 from the Common Good Fund towards the cost of providing lunches for the participating families from Woodburn in a “Play in the Park” summer holiday project, in Dalkeith.

8 Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the Meeting during discussion of the undernoted items, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraphs 3, 12 and 14 of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973.

Decision

- (a) Private Hire Car Driver's Licence - Consideration of Application – Refused as the Applicant was not a fit and proper person to be the holder of a licence;
- (b) Street Trader's Licence – Consideration of Application – Continued consideration of Application to enable the applicant either to withdraw the application in writing or attend the next meeting; and
- (c) Window Cleaner's Licence – Consideration of Application – Continued consideration of Application to enable the applicant to attend the next meeting.

The Meeting terminated at 2.50pm.

APPENDIX

(relative to paragraph 6(b))

Note of Meeting of Short Life Working Group on Trusts and Funds

administered by the Council held in the Committee Room, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 3 May 2011 at 11.35am.

Present: Councillors Beattie (Chair), Brown and Milligan

With reference to paragraph 4 of the Minutes of the General Purposes Committee of 5 April 2011, there was submitted report, dated 2 May 2011, by the Director, Corporate Resources, concerning the decision to establish this Short Life Working Group and confirming:-

- (a) that a Seminar of the General Purposes Committee had taken place on 23 February 2011 and it had been agreed to recommend as follows:-
 - (i) To maintain the *status quo* in respect of the Dalkeith and Penicuik Common Good Funds ie to continue to apply benefit unequivocally for the benefit of the inhabitants of the former burghal areas;
 - (ii) To remit the terms of the Midlothian Educational Trust to the Director, Education and Children's Services for consideration and appropriate action;
 - (iii) To encourage Tynewater Primary School to reintroduce the award of the Miss A Pringle Prize;
 - (iv) To establish a Short Life Working Group, comprising the Chair and Councillors Brown and Milligan, to consider the administration and disbursement of the various Small Trusts, Bequests and Funds held by the Council;
 - (v) To maintain the *status quo* in respect of the Pentland House Fund; and
 - (vi) To maintain the *status quo*, in respect of the Opencast Funds:-
 - (1) ie via recommendations as regards the award of benefit by the Blinkbonny and Gourlaw Sub Committees ie for the improvement of the environment in the vicinity of Blinkbonny and Monteith Houses (and job Creation in relation to the failed Blinkbonny Drift Mine); and Gourlaw, Newbigging and Shewington, respectively, and the respective Haul Routes to the Trunk Road; and
 - (2) by decision of the Committee, in respect of Smeaton;

- (b) that on, 19 April the Audit Committee had agreed *inter alia* to request that the remit include an examination of the broader issues of internal control, processes and procedures across the Council to ensure compliance with 'Following the Public Pound' requirements in all cases;
- (c) the background to the criteria of the various types of Fund or Trust;
- (d) the current procedures relating to the award of benefit and the need for guidance as to the kind and level of the criteria to be employed in the future as regards the way in which disbursements ought to be made; and
- (e) that it was intended to present the Group's recommendations to the General Purposes Committee on 7 June 2011.

Appended to the report was a Note of the Seminar referred to above.

Following introductory remarks by the Director, Corporate Resources, during which he indicated that he intended to prepare an action plan based on the decisions of the Audit Committee, involving input from staff in the appropriate disciplines in the Division; and the Chair during which he suggested *inter alia* that, if possible, the remit might be approached on a 'generic' cross disciplinary basis to these and other Trust related activities across the Council, the following points were made:-

- (1) subject to the need to be able to demonstrate that it had proved impossible to award benefit on the basis of the terms of the relative small trust e.g. Poor of Dalkeith, Sick Poor of Bonnyrigg area, etc, the feasibility of amalgamating some of the small trusts and bequests on a local area or topic basis be investigated with care being taken to ensure that, where it was possible to identify descendents of beneficiaries, especially in relation to those trusts which related to sepulchre, appropriate consultation take place and, meantime, there be no public announcement about the availability of benefit;
- (2) the feasibility of delegating power to Officers could be investigated in relation to the award of benefit directly eg by Social Workers, as regards support for the Poor and Sick Poor;
- (3) enquiries could be made of Officers involved in Housing Benefit, etc and any local organisations, with a view to identifying potential beneficiaries;
- (4) the Bequests relating to the Burial Ground at Stow and the MacFie Hall in Heriot; and the Peter Lyle Bequest ought to be transferred to Scottish Borders Council and Dalkeith Common Good Fund, respectively, without much further process;
- (5) contact could be made with the Agents for Stair Estates to determine their view on the disbursement of the Fund;
- (6) Officers could seek potential ways forward for the administration of the various small trusts and report back; and

- (7) in relation to the Open Cast Funds, any community consultation as regards potential disbursements should be delayed pending the outcome of the deliberations of the Working Group.

The Meeting terminated at 12.05pm.