

SURREY COUNTY COUNCIL**CABINET****DATE: 26 APRIL 2016****REPORT OF: LINDA KEMENY, CABINET MEMBER FOR SCHOOLS SKILLS AND EDUCATIONAL ACHIEVEMENT****LEAD OFFICER: GARATH SYMONDS, ASSISTANT DIRECTOR COMMISSIONING AND PREVENTION****SUBJECT: PROPOSED CHANGES TO THE GOVERNANCE AND OBJECTS OF THE TULK BEQUEST****SUMMARY OF ISSUE:**

The Tulk Fund for School Sports Facilities is governed by a Scheme dated 26 July 2006. The Objects of the Charity are set out at paragraph 4 of the Scheme: *The object of the charity is to provide recreational facilities and advance education by providing or assisting in the provision or improvement of outdoor sports facilities (not including equipment) for County maintained secondary schools in Surrey.*

The Tulk Fund is a registered charity (Reg. No. 312006) with an accumulated income of £335,950 (valuation as at 5 April 2016). Other than a historic agreement that £157,000 is to be spent on a project, income of £178,950 remains in the fund.

The Fund is governed by a Scheme that allows for the bequest to be used to fund projects at county maintained secondary schools. Academies were not in existence in Surrey when the original bequest was made nor when the 2006 Scheme was drawn up. A new Scheme would be needed, with amended objects, if the Fund were to be made available to all county maintained secondary schools and secondary academies in Surrey. A request to the Charity Commission for a new Scheme of this nature needs to be approved by Cabinet.

In addition, the governance of the charity is onerous under the current Scheme with full Cabinet being required to make every decision. Cabinet is asked to alter these arrangements so that the decision making in relation to allocation of funds can be delegated to the Cabinet Member for Schools, Skills and Educational Achievement.

The Tulk Fund is made up of a permanent endowment (£14,735) and accumulated income (£335,950). Whilst the accumulated income can be allocated to projects by the Trustees of the Fund (Surrey County Council), any use of the initial permanent endowment must be approved by Order of the Charity Commission in advance.

Due to the low value of the initial capital, it is considered that seeking approval to be able to allocate the permanent endowment to appropriate projects would be sensible, so that this initial capital can be used effectively.

RECOMMENDATIONS:

It is recommended that the Cabinet:

1. Agree to apply to the Charity Commission for a new Scheme to be drawn up which amends the Objects so both 'county maintained secondary schools' and 'secondary academies' can benefit from the funds available in the bequest.
2. Requests that the Director of Legal, Democratic and Cultural Services prepares amendments to the Scheme of Delegation and to the Constitution to reflect the changes arising from this report and submits them for approval by the Leader.
3. Agree the application to the Charity Commission for a new Scheme that will include a provision to enable the Trustees to allocate the permanent endowment (£15,502) in future.
4. Agree that, following Charity Commission advice, decisions relating to any final amendments to the Scheme are delegated to the Director for Children's Services (or alternative appropriate officer) in consultation with the Cabinet Member for Schools, Skills and Educational Achievement.

REASON FOR RECOMMENDATIONS:

Inclusion of secondary academies in the Scheme would mean that all state funded secondary schools in Surrey were once again in scope, as they were in 2006.

To ensure there are clear and proportionate governance arrangements in place to enable the effective administration of the Fund.

The remaining permanent endowment would most effectively be spent on future projects alongside the accumulated interest, as the value of the permanent endowment is insufficient to fund any significant project alone or to generate any significant interest in the medium term.

DETAILS:
Background

1. The Tulk Fund is a registered charity. The Trust was originally set up in 1952, with a bequest of £10,000 from the will of Mr. J.A. Tulk, a chairman of governors for a Surrey school, to provide playing fields for secondary schools in Surrey, but this was never pursued. In July 2006, the Charity Commissioners, at the request of the County Council, made a Scheme to alter the Object of the charity. The object now is: 'To provide recreational facilities and advance education by providing or assisting in the provision or improvement of outdoor sports facilities (not including equipment) for County maintained secondary schools'.
2. The accumulated income amounts to £335,950. The fund has a residual commitment to a project supporting sports changing facilities at Winston Churchill School, for which funding has not yet been paid. Therefore, the residual uncommitted value of the Tulk bequest is £178,950.

3. The Tulk Fund is currently governed by a Charity Commission Scheme from 2006 which restricts its scope to county maintained secondary schools. For clarity it is confirmed that this definition includes secondary special schools. The issue of academies was not considered at that time as there were no academies in Surrey. If the fund is to be available to all state maintained secondary schools in Surrey, as originally intended, a request needs to be made to the Charity Commission to draw up a new Scheme amending the objects of the charity to include funding projects at academy schools. The governing Scheme requires full Cabinet approval that a new Scheme be produced.
4. In addition the governance arrangements in the current Scheme are unclear and onerous and it is proposed that the decision making in relation to allocation of funds from this Trust is delegated to Cabinet Member for Schools, Skills and Educational Achievement. This will provide clear and simplified governance arrangements for the Trust.
5. Further, the permanent endowment will not generate sufficient interest over the medium term to allow any significant improvements to sports facilities and the current balance on the fund has been built up over many years. Therefore there appears little real benefit in retaining this permanent endowment indefinitely. Therefore it is recommended that the new Scheme include the ability to spend the permanent endowment, which the current Scheme does not allow. This could essentially allow the Tulk Fund to close once all funding has been allocated.

Planning and capital considerations

6. None

CONSULTATION:

7. The Council conducted a consultation exercise through the Schools bulletin over a 4 week period, inviting all secondary schools across the county to comment on the proposals. In addition, internal discussions have taken place with Surrey legal services and finance teams.

Consultation responses

8. There were two responses to consultation. One was a simple enquiry about the Tulk fund and the second was to suggest that special schools should be able to access the fund. It has been established that special schools with a secondary element would be entitled under the current and proposed Scheme.
9. All parties thus far are in agreement that widening the Scheme to include for investment in academies is appropriate, as the original intention was for the scheme to benefit all secondary maintained schools in Surrey; 35 of Surrey's 55 state secondary schools are now academies.

RISK MANAGEMENT AND IMPLICATIONS:

10. If Charity Commission approval is not obtained, then the 2006 Scheme will remain in place and academies will not be able to apply for use of funds from the scheme, which is the current position.

Financial and Value for Money Implications

11. The Fund is invested in stock market funds, which will need to be sold in order to make grants from the Fund. The timing of the sale decision will affect the value realised and therefore the amount available for grant payments. Widening the scope of the scheme to include academies will make it easier to support the schools with the highest need irrespective of status, and to that extent should facilitate value for money. All future bids will be determined and decided following due process which will be guided and evaluated on the principles of need, equity and value for money.

Section 151 Officer Commentary

12. These proposals do not commit the council to any spending out of the fund and thus do not expose the council to any additional financial risks. All future spending from the Fund will be subject to due process and Cabinet Member decision.

Legal Implications – Monitoring Officer

13. The County Council is the sole Trustee of this charity.
14. Under the current Scheme decisions about the allocation of funds to projects are to be made by Cabinet. Charity Commission approval is not required to alter the governance arrangements for this Fund to delegate this decision making.
15. The intention of the original Tulk bequest in 1952 and the current objects are clear. The Funds are to be used to provide recreational and sports facilities for Surrey state secondary schools, this definition includes secondary special needs schools. The current Objects restrict the use of the funds to maintained secondary schools and as such the Fund cannot be spent on projects at secondary state funded academies. Therefore the change in the status of state schools has restricted the use of the Funds and it is unlikely this would have been the intention of the original bequest. It also means that the Objects are now out of date.
16. The terms of the original bequest and the current Scheme do not allow the permanent endowment to be spent. There is a chance that the Charity Commission will not agree to a provision which enables this to be spent. However, given the relatively small sum involved at today's value the Charity Commission may view this restriction as being unnecessary.
17. Cabinet need to be aware that agreement to the new Scheme and the changes being proposed in that Scheme are subject to Charity Commission approval. There is no current legislation or provision in the governing documents which enable the Council to make these changes without the approval of the Charity Commission.

Equalities and Diversity

18. The proposal would mean that all secondary schools in Surrey would have the opportunity to benefit from the Trust. No group with any protected characteristics under Equalities legislation will be disadvantaged by this proposal. As a result no EIA has been produced. With secondary school provision being open to all applicants with the highest priority given to Looked After Children and pupils with

Special Educational Needs this proposal will support our most vulnerable children.

Other Implications:

19. The potential implications for the following Council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	Set out below
Safeguarding responsibilities for vulnerable children and adults	Set out below
Public Health	Set out below
Climate change	No significant implications arising from this report
Carbon emissions	No significant implications arising from this report

Corporate Parenting/Looked After Children implications

20. This proposal would provide the potential for improvements to secondary school provision across Surrey which would be of benefit to the community served by the school. Therefore, this would also be of benefit to any Looked After Children who have the opportunity of attending a school. The admission of Looked After Children is a priority within school admission arrangements.

Safeguarding responsibilities for vulnerable children and adults implications

21. Safeguarding vulnerable children is a high priority in Surrey. Schools have considerable expertise in safeguarding vulnerable children and adhere to robust procedures. Any school applying for Tulk funding would continue to apply good practice in the area of safeguarding. Safeguarding is monitored when Ofsted carries out inspections of schools.

Public Health implications

22. The provision of improved sporting at any Surrey school will improve public health in the locality. The ability for community groups to use facilities provided by schools will also promote good public health and increase levels of activity by providing local and affordable access to high quality sporting facilities.

Climate change/carbon emissions implications

23. No significant implications

WHAT HAPPENS NEXT:

24. If Cabinet decides to agree to the proposals in this report, the next steps are:

- The Director of Legal and Democratic Services will prepare amendments to the Scheme of Delegation and to the Constitution to reflect the changes arising from this report and submit them for approval by the Leader.
- Application will be made to the Charity Commission to draw up the new Scheme.
- If the Charity Commission draws up the said Scheme, the terms of the Scheme will take effect.
- If the Charity Commission does not approve the new Scheme or part thereof then the current arrangements in relation to not spending the initial capital and or maintained secondary schools only benefiting from the funds will remain.
- The Council will then run a process to invite applications from eligible schools to apply for funding in line with the relevant Scheme for the Tulk Fund.

Contact Officer:

Marcus Robinson – Commissioning Development Manager
marcus.robinson@surreycc.gov.uk, 0208 541 9547
