

History Behind the Sale of 3 Penrose Road

Legal

The best place to start is right at the beginning in 1897. This was the year that John Peverell Rogers conveyed a piece of land to Helston Borough Council *'in pursuance of the provisions of the Technical and Industrial Institutions Act 1892.....as a site for an Institution for promoting Technical and Industrial Instruction and Training'*.

The first point of note therefore is that the land was conveyed under an Act of Parliament and restricted use is not due to a covenant. A covenant on land is an agreement between landowners where one party will restrict the use of its land in some way. Covenants can be removed by application to the Land Registry but unfortunately in the case of 3 Penrose Road it is not that simple and would require an amendment to the Act of Parliament.

The reason the use of the proceeds from sale is so restrictive is contained in Section 9 of the Technical and Industrial Institutions Act 1892:-

- 9(1) *Land acquired under the powers of this Act shall not be used otherwise than for the purpose of an institution within the meaning of this Act, but, may be sold or may be exchanged for other land.*
- 9(2) *The governing body or their trustees may execute conveyances and do all acts necessary to effectuate a sale or exchange.*
- 9(3) *On a sale, the receipt of the governing body or of the trustees for the governing body shall be a sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of land.*
- 9(4) *Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.*

In summary, this means that the proceeds from selling 3 Penrose Road must be used to purchase land for an institution of scientific and technical instruction.

History

On 29th September 1904 the original Passmore Edwards Institute was leased to Cornwall County Council for 75 years on the understanding that the County Council would extend the building. Neighbouring land was purchased and the extension built to enable the County Secondary School to open on 19th September 1905.

When Cornwall County Council no longer required the school the original building and extension reverted back to the Town Council. On 19th September 1978 the Town Council leased the whole property to the Trustees of the Helston & District Community Association for a term of 27 years. Following several meetings, on 21st July 2005 the Town Council agreed to extend the lease, with Conditions, to the Helston & District Community Association for a further 21 years. However, during the lease negotiations the Council's solicitor discovered the restrictions contained within the 1892 Act and subsequently advised that to grant a lease for use as a Community Centre would be illegal.

Specialist legal advice was obtained and the Council was informed that a lease could be granted to a legal 'Institution' provided the part of the building on the original land (two-thirds) was used solely for scientific and technical instruction and that computing courses would comply. Further advice confirmed that a Social Enterprise such as a Community Interest Company would constitute an Institution for this purpose but the Helston & District Community Association as constituted would not.

The members of the Helston & District Community Association were thus afforded the opportunity to give a presentation to the Town Council on how they would form a Social Enterprise and comply with the 1892 Act. At the arranged meeting on 17th July 2007 members of the Helston & District Community Association announced that they would not be forming a Social Enterprise and concluded with the following statement:-

'It is hoped that we can work together to help with a smooth transition of the building as so many people rely on the Community Centre for the facilities provided there.'

As a consequence, the Town Council issued a Press Release and advertisement requesting expressions of interest from other local organisations. Initially, two were received – one from the Epworth Hall Management Committee and the other rather surprisingly from the Helston & District Community Association. Both were invited to give a presentation to include:-

- The organisation's vision for the future of the building;
- Details of forming a Social Enterprise;
- Management structure and membership; and
- A Business Plan

Prior to the meeting the Epworth Hall Management Committee withdrew leaving the Helston & District Community Association to give its presentation following which the following Resolution was passed:-

'that, on the basis of the Business Plan and presentation by members of the Helston & District Community Association, the Council does not grant a lease for the Community Centre because the presentation did not include:

- a) the organisation's vision for the future of the building;
- b) details of forming a Social Enterprise;
- c) details of a management structure and membership; or
- d) a satisfactory Business Plan.

During this same period, advice was sought from the Charity Commission and National Association of Local Councils about the feasibility of selling the building and subsequent responsibility to conform with the 1892 Act. On 24th January 2008 the Council Resolved that

- a) the Council sell the current Community Centre building at the highest value having sought advice regarding planning permission, and to look for a site to build a new Community Centre, and
- b) the Council would make every effort to ensure current User groups find alternative accommodation as and when the building closed.

Throughout this time the Helston & District Community Association continued to occupy the building and run it as a Community Centre without providing the Council with the information that it had requested regarding forming a Social Enterprise etc. This culminated in the Council instructing its solicitor to serve notice on the Trustees of the Helston & District Community Association to seek possession of the building.

In October 2008 the Council appointed pdp Green Consulting Ltd to draw up plans to convert the building into apartments in an attempt to make the building more appealing to prospective purchasers. Planning Application W2/PA08/02062/FM was submitted in December 2008 but later withdrawn and not pursued as it was believed a conversion scheme at that time was unviable due to the economic climate.

During 2009 the Helston and District Community Association initiated legal action against the Town Council for non-renewal of the lease. This was defended by the Town Council for the reasons above, however, the Council offered to sell the building to the Helston and District Community Association in August 2009. The Council and the Helston and District Community Association jointly funded an independent valuation of the building. At the 19th August 2010 Full Council meeting it was Resolved that:-

- (a) as previously indicated, the Council would consider offers in the region of £275,000 to purchase the Community Centre building;
- (b) the deadline for receipt of a firm offer, based on £275,000, be extended to Friday 10th September 2010; and
- (c) if an offer was not received by 10th September 2010 the Council would take appropriate alternative action regarding the future of the building.

In the meantime, the Council instructed its solicitor to pursue a date for the Court Hearing regarding the non-renewal of the lease. Over the next few months the Helston and District Community Association decided that it would not purchase the building and to withdraw its legal action. Following receipt of their letter it was Resolved

that the Town Council would be prepared to settle the matter on condition that:

- a) the Helston & District Community Association gave clean and vacant possession of the Community Centre, free of surplus goods and rubbish, by the 28th February 2011;
- b) by the 14th March 2011 the parties jointly apply to the Court for an Order by consent that the Helston & District Community Association's claim be withdrawn; and
- c) prior to vacant possession, representatives of Helston Town Council and the Helston & District Community Association meet on site to discuss an orderly hand over.

The Council then decided in May 2011 to sell the Building at auction and appointed NCT Estate Agents to sell the property. The building was included in the Clive Emson auction on 23rd September 2011. At the auction the property did not sell, however, three expressions of interest had been received by the Estate agents following the auction. The Council agreed to re-enter the property in Clive Emson's November 2011 auction with a reduced guide price of £100k - £150k whilst following-up the expressions of interest.

At the auction the building was sold to an individual for £165k. However, the individual advised the Council that he had a cash-flow problem as he was selling a property to finance the purchase. Therefore, in February the Council agreed to an extension of time to the 31st May 2012 for the conveyance to be completed. Unfortunately, the individual disappeared and therefore the Council had no option but to rescind the contract and pursue the purchaser for the costs incurred by the Council, and once again place the property in the Clive Emson auction on 25th July 2012. However, prior to the auction, the Council received a bid to purchase the building for the same price that the individual had bid at the previous auction ie £165k with the restrictions going with the proceeds of sale ie, remaining with the Town Council. The Council accepted this bid and exchanged contracts with completion due on 20th August 2012. The group behind the purchase pledged that the building would be preserved for public benefit and transferred to a charity for 'community and educational use'. At this time, the Council intended to use the proceeds of sale towards a new community building.

With the property finally sold, this left the Town Council with the problem of how to spend the proceeds legally with two-thirds restricted by the 1892 Act.

Unrestricted Proceeds of Sale

In November 2013 the Full Council Resolved that

the proceeds from the sale of 3 Penrose Road be un-ringfenced for use for community projects.

In other words the funds were no longer ear-marked for a new community building. Notice was then circulated advising local organisations that they could apply for grant funding. At its meeting on 20th November 2014 the Council considered 16 applications and agreed to grant the whole of the £53k unrestricted funds to the Epworth Hall to improve its disabled access.

Restricted Proceeds of Sale

Over the years following the sale the Council researched and considered a number of options to release the funds from the restrictions with assistance from Derek Thomas MP. The options considered to date are detailed below:

- Private Bill

This is legislation promoted by persons or organisations outside of Parliament who must commission one of a small group of Parliamentary Agents. Private legislation is legislation that affects specific groups of people or localities, unlike public legislation which affects all people equally. Quotations were obtained from Parliamentary Agents and the potential cost of this option with no guarantee of success meant that the Council decided not to pursue it.

- Legislative Reform Order

Section 1 of the Legislative and Regulatory Reform Act 2006 gives Ministers certain powers to make orders (Legislative Reform Orders) that remove or reduce burdens resulting directly or indirectly from legislation. Before a Minister may make a Legislative Reform Order, he or she must take the following steps:

- Consult widely with those affected by the proposals;
- Lay before Parliament a draft Order and explanatory document, and allow time for parliamentary consideration; and
- Obtain Parliament's sanction for making the Order.

The House of Commons Library specialist was of the opinion that this would be unlikely to succeed as it would affect the whole Act rather than be specific to 3 Penrose Road. Legislative Reform Orders are also time consuming to implement, taking years rather than months.

- Joint Project with another Local Organisation

In 2013 discussions were held with a local sports club about a potential joint venture of mutual benefit. Whilst not progressed at that time, there is still a possibility of working with another organisation, but the fact remains that the Town Council must buy land and conform to the 1892 Act.

More recently the Town Council sought legal advice about a proposed venture with an educational establishment but the advice received was that the proposal would not conform to the 1892 Act.

- Localism Order

Following intervention by Derek Thomas MP, representatives of the Town Council were invited to a meeting with Government advisors to the Ministry of Housing, Communities & Local Government on 16th August 2018. The outcome of the meeting was the suggestion of a Localism Order.

A Localism Order is a legislative procedure that amends primary legislation for specific instances in which an Authority's ability to exercise its General Power of Competence is restricted, and differs from a Legislative Reform Order which has much wider implications on burdens resulting directly or indirectly from existing legislation.

When an application for an Order is made by a council to the Minister, the council must demonstrate how their request meets the statutory conditions for a Localism Order. The Minister will also want assurances that all other options have been exhausted.

If the Minister considers that the statutory conditions are satisfied and agrees to proceed, following a statutory consultation, the Order will be subject to the parliamentary process and scrutiny.