
RHYMERS TOWER, EARLSTON

Report by Chief Executive

SCOTTISH BORDERS COUNCIL

15 DECEMBER 2016

1 PURPOSE AND SUMMARY

- 1.1 **The purpose of this Report is to (a) update the Council on the ownership of Rhymers Tower, Earlston ("the Tower") and the actions required to re-establish the Trust and appoint new Trustees and (b) highlight the land issues relating to the Tower.**
- 1.2 Rhymers Tower was disposed in favour of Rhymers Tower Trustees in 1966. The Trustees, and their successors in office, were Trustees *ex officio* i.e. they were Trustees due to the position/offices they held at that time.
- 1.3 The Trust was resurrected in November 1994 by then Ettrick and Lauderdale District Council in terms of Section 223 of the Local Government (Scotland) Act 1973, but it is not clear what has happened to the Trust since the late 1990s. It would appear that currently no trustees have been appointed.
- 1.4 The deed transferring the Tower to the Trustees states that access to the Tower is via the Turnpike Road. This access route appears have been built over with no action taken at the time by the Trustees. It also appears that part of the land has been incorporated into the garden ground, with fish pond, of the neighbouring Café/Restaurant.

2 RECOMMENDATIONS

- 2.1 **I recommend that the Council:**
 - (a) **revive the Trust by appointing local ward members from Leaderdale and Melrose in terms of the Trust provisions, as new Trustees;**
 - (b) **Note that once the Trust has been revived the Trustees can appoint others as Trustees and are perhaps likely to do so;**
 - (c) **Note that the Trustees may wish to address the land and access issues identified within this Report.**

3 BACKGROUND

- 3.1 Rhymers Tower was disposed in favour of Rhymers Tower Trustees in 1966 and has been a 'B' Listed Building since 1971. Listing requires formal consent to be obtained for alterations but not for repairs.
- 3.2 The terms of the Trust provisions are that:
- (a) Disponees to be known as "Rhymers Tower Trustees" and shall hold subjects in all time coming in trust for the inhabitants of the Village and Parish of Earlston. The original Trustees were County Councillor, District Councillor and Registrar and their successors in these Offices.
 - (b) Trustees shall hold office as Trustees ex officiis. In the event of the holders or any one or more of the holders of the said offices being for any reason unable to act as Trustees or Trustee the said Trustees shall appoint a Trustee or Trustees in place of the holders of such Offices to the effect that the number of Trustees shall at all times be maintained at not less than 3 such persons to be the holders of some public office or offices in the Village or Parish of Earlston and to hold as Trustees ex officiis.
 - (c) 2 shall be a quorum of the Trustees, who shall at all times be empowered to act by a majority.
 - (d) The County Councillor for the Electoral Division of Earlston shall act as Chairman of Trustees.
 - (e) Trustees shall have all the powers, privileges, rights and immunities conferred on gratuitous Trustees in Scotland, whether under Common Law, or in the terms of the Trust (Scotland) Act 1921, as amended from time to time.
 - (f) The Trustees shall at their own discretion, should they consider it necessary or expedient to do so, appoint a Committee of Management which shall be responsible for the repair and maintenance of Rhymers Tower, for such arrangements as they may deem necessary for making the same open for inspection by the public and for which they may, at their discretion make a charge and for raising the necessary funds to enable them to carry out such duties.
- 3.3 The Trust was revived in 1994 by Ettrick & Lauderdale District Council under The Local Government (Scotland) Act 1973, as the then Borders Regional Council were concerned that the fabric of the structure was deteriorating. The new Trustees met on 9 February 1995 and agreed to co-opt a Community Council member onto the Trust and to encourage that body to apply for funding for a survey of works. In 1998 building works to the Tower were agreed by the then Trustees.
- 3.4 It would appear that currently no Scottish Borders Councillors are recognised as being Trustees by virtue of their office. In order to ensure that the Tower remains in the ownership of the Trust and is able to be

managed by the Trust it is considered appropriate that Scottish Borders Council now appoint the three local ward members as Trustees, ex officio.

- 3.5 In order to ensure the sustainability of the Trust, the Trustees should perhaps thereafter assume other individuals as Trustees. They are entitled to do so in terms of the Trust provisions. It should be further noted that the Trust provisions enable the Councillors themselves to resign office as Trustees provided that there are at least 3 Trustees remaining.

4 LAND AND ACCESS ISSUES

- 4.1 Access to the Tower as per the conveyance to the Trustees in 1966 was via the Turnpike Road. This access route appears have been built over with no action taken at the time by the Trustees. There is no longer direct public access to the Tower. This has been blocked for a number of years. Access can only be taken via the Café/Restaurant. There is therefore a risk that it could be argued that the right of access may have been lost through prescription, i.e. if such rights are not used for 20 years they will be extinguished.
- 4.2 As access to the Tower has been restricted there is also a probability of further encroachment of the Tower's land. Appendix A shows photographs of the Tower taken in February 2015.
- 4.3 As there were concerns that the fabric of the structure was deteriorating repairs were carried out to the Tower in 1998/1999 by the Scottish Borders Council. The cost of these safety works were funded by the Council.
- 4.4 An Officer who was involved with the repairs at that time advises that it would appear that the Tower was being used as garden ground by the Café/Restaurant then and the fish pond was there when works were being carried out.
- 4.5 The title deeds for both the Tower and the neighbouring landowners have been examined by Scottish Borders Council's Legal Services. Through that process it has been identified that:
- (a) The title to the Tower stems from a larger 1894 title. In 1952 part of this larger title was conveyed to John Rutherford & Sons Limited under exception of the Tower. The plan at Appendix B shows the location of the Tower as per the 1894 deed and the extent of the title at that time. The Tower is the small 'L' shaped building on the plan and the extent of the title is as outlined in red.
 - (b) The title to the Tower itself was disposed to the Rhymers Tower Trustees in 1966.
 - (c) Legal Services carried out a search in the Sasines Register and the title to the Tower rests with the 1966 deed.
 - (d) In the intervening years the title for the Rutherford land has been transferred and added to on various occasions. The plan at Appendix C shows the extent of the land in the name of The Trustees for the Firm of Rhymers Tower (the Café/Restaurant) i.e. those areas coloured purple and pink
- 4.6 The Trustees will no doubt wish to address this access issue. Since no challenge has yet been made to the blocking of this access it could be suggested that their first port of call would be to enter into discussions with

the owners of the Café/Restaurant to share their visions of the Tower and seek to agree a mutually agreeable access solution.

- 4.7 As advised at 4.5 the Trust once revived would appear to have a good title to the Tower however, it is suggested that the Trustees should consider taking steps to voluntarily register the title in the Land Register of Scotland. There will be a cost for this, as a registration fee will be payable based on the value of the land/Tower. The benefits of voluntary registration are that it would give greater certainty regarding land ownership, clarity on boundaries and the land would be shown on a cadastral map.
- 4.8 The Trustees, once appointed, would perhaps like to consider contacting the owners of the Café/Restaurant to discuss access and encroachment issues. If the Trustees are not able to reach an amicable resolution to the access issue with the owners of the Café/Restaurant they may require to raise legal proceedings. Such proceedings would be heard by the Lands Tribunal. Further costs would, of course, be associated with this. The Trust would require to raise monies to fund such courses of action.

5 IMPLICATIONS

5.1 Financial

There are no financial costs for Scottish Borders Council anticipated in reviving the Trust. Any costs which flow from 4 above would be borne by the Trust.

5.2 Risk and Mitigations

- (a) Local residents have approached Scottish Borders Council noting that they think they believe the Scottish Borders Council have an obligation to maintain public access to the Tower. There is a reputational risk if Scottish Borders Council is not seen to be doing anything to assert or establish what is perceived to be a right of public access. This risk will be mitigated by the Council reviving the Trust and there being seen to be a body having ownership of the Tower.
- (b) There is a risk that Scottish Borders Council may be seen by local residents to be responsible for the Tower and the public may therefore turn to Scottish Borders Council to bear the costs of any future repairs that may be required to this ancient Tower. This risk would be mitigated by the Trust being revived. That separate body would be clearly identified as being responsible for the Tower. The Trust may perhaps be able to access funds from bodies such as The Big Lottery Fund if future repairs are required.

5.3 Equalities

It is not considered that an Equalities Impact Assessment is required for this Report.

5.4 Acting Sustainably

There are no significant impacts on the economy, community or environment arising from the proposals contained in this report.

5.5 Carbon Management

It is not anticipated that the Council's carbon emissions will be effected by the Council's decision in regard to this report.

5.6 Rural Proofing

It is anticipated there will be no adverse impact on the rural area from the proposals contained in this report.

5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Schemes of Administration or Scheme of Delegation.

6 CONSULTATION

6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council are being consulted and any comments received will be incorporated in the Report.

6.2 Corporate Communications and the Service Director Assets and Infrastructure have also been consulted and any comments received will be incorporated in the report.

Approved by

**Tracey Logan
Chief Executive**

Signature

Author(s)

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|----------------|----------------------------------|
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Background Papers: None
Previous Minute Reference: None

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