Section 66 Inspectors’ Report

Solas – Galway Picture Palace CLG

(Registered Charity Number 20068493)

May 2018

Inspector's Report

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We have, in accordance with the provisions of Section 64 of the Charites Act 2009 carried out an investigation into the affairs of Solas – Galway Picture Palace CLG (SGPP CLG).

We hereby submit our report to the Charities Regulatory Authority in accordance with Section 66 of the Act.

Signed:

Eugene McMahon
Inspector
Mazars

Eamon O'Halloran
Inspector
Charities Regulatory Authority

Dated: 16 May 2018

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1 Charity Background

Solas - Galway Picture Palace Company Limited by Guarantee (the Charity) was originally founded in 2007 in order to:

- establish a state-of-the-art contemporary arthouse cinema in the region;
- promote arts, culture, heritage and sciences in the community; and
- promote the advancement of education and understanding of the arts.

The idea of developing a cultural cinema in Galway was first proposed in 2002 by a group of like-minded people in the region who had an involvement in the arts. Over the succeeding years, the process of raising the required funds and obtaining a suitable location was commenced. Upon obtaining a location for the arthouse cinema the group formally established a company incorporated on the 1st November 2007.

The company obtained a charitable tax exemption and a CHY number from the Revenue Commissioners on the 4th November 2008. Further to Section 40 of the Charities Act 2009, the Charity was automatically entered onto the Public Register of Charities as a registered Irish Charity on 16 October 2014.

From November 2008, there were eight charity trustees on the Board of the Charity who were re-elected annually. No new members were appointed over the ensuing years. The Board oversaw the affairs of the charity and the construction of the cinema over the period 2007 to 2017.

In the period from July 2009 to February 2014, the Charity was responsible for the sourcing of funding, tendering and overseeing the construction of Phase 1 of the cultural cinema in Galway. This period included the signing of a Heads of Agreement on 27 November 2013 with a third party to operate the cinema. As part of the agreement, a third party[1] would provide funding of €750,000 as well as pay an annual rent upon completion for a 25-year lease of the cinema.

Following completion of Phase 1, the contractors reviewed the budgeted costs for phase 2 and advised the Charity that the cost to complete would be €4.65m (previously original budgeted contract amount being €4.1m).

In the period from December 2014 to June 2016, a number of different individuals were appointed to advance the project. In June 2016, it was agreed the third-party operator (subject to the Heads of Agreement referred to above) would be appointed as project manager to oversee the completion of the project and this was formalised in December 2016 with the signing of the interparty agreement.

At the same time (i.e. June 2016), negotiations and discussions commenced in relation to putting a new arrangement in place in respect of the cultural cinema and responsibility

[1] This is the same third party that would be a party to the interparty agreement.

for its long-term future. The parties who were subject to the proposed agreement at this time were many of the original funders of the project (which included grant funding from the Department of Culture, Heritage and the Gaeltacht, Galway City Council, The Irish Film Board and financing from the Western Development Commission), the third-party operator and the Charity. Based on the negotiations and discussions, it was agreed that a substantial portion of the assets and liabilities of the Charity (as reported in their audited financial statements), including the underlying funding obligations, would be transferred to the third-party operator.

The third-party operator, through a newly incorporated company, was assigned a 30-year lease[2] with Galway City Council (GCC), for the site on which the partially constructed cinema asset stood, and a rent of €1 per annum is being paid for the first 25 years. The third party agreed to the payment of market rent for the final 5 years of the lease. The market rent to be determined on the basis of income and expenditure of the cinema as a going concern. The third party obtained access to the remaining funding to complete the project, and agreed to provide approximately €881k in funding in order to complete the project. On 21 December 2016, all parties signed the interparty agreement to affect the transfer of the partially built asset which was to be the cultural cinema out of the control of the Charity with the third-party operator being responsible for the completion of the construction of the asset and the operation of the cinema. The inspectors note that the freehold interest of the site is owned by GCC.

[2] A variation to the original 99 – year lease signed the 3rd April 2009 between GCC and SGPP CLG was completed by way of a deed of variation and a deed of assignment.

The total amount of funding granted to the project was approximately €9.48m. The sources of that funding are summarised in the following table which were agreed to the interparty agreement.

Funder	Amount
Access II from the Government Department which carried the arts and culture function	€ 2,000,000
Irish Film Board	€ 1,063,000
Cultural Cinema Consortium (Note 1)	€ 1,250,000
Additional funding from the Government Department which carried the arts and culture function	€ 990,000
Western Development Commission	€ 650,000
Western Development Commission - bridging finance to Galway City Council	€ 200,000
Galway City Council	€ 242,000
Fundraising	€ 301,975
Third party Operator contribution	€ 881,844
Total funding provided	€ 7,578,819
Purchase of site by Galway City Council in 2007	€ 1,900,000
	€ 9,478,819

Note 1: From the 1st January 2010, the Government Department which carried the arts and culture function took over responsibility for capital funding from the Arts Council (AC). The AC's involvement in the project effectively ceased from this date and, as a result, the AC were not a party to the interparty agreement and its negotiations in 2016. The AC retrospectively executed a Deed of Novation in December 2016 and a Deed of Transfer in January 2017 in relation to its interest in SGPP CLG which gave formal effect to the arrangement which occurred in January 2010.

The latest audited financial statements for the Charity as filed with the Companies Registration Office were for the financial year ended 31 December 2014. Audited accounts have not been prepared for subsequent year ends. For the financial year ended 31 December 2014, the charity reported a loss of €106,777 (2013: loss of €76,787) and net liabilities of €541,921 (2013: net liabilities of €435,144).

The charity's details can be viewed on the Public Register of Charities, www.charitiesregulatoryauthority.ie.

2 Background and Approach to the Investigation

In September 2016, media reports regarding the charity came to the attention of the Charities Regulatory Authority.

The compliance unit of the Charities Regulatory Authority thereafter conducted preliminary inquiries, which included reviewing charity information and documentation and meeting with the charity's chairman and auditor/accountant to the charity.

On the 23rd February 2017, the Charities Regulatory Authority appointed Eugene McMahon (Mazars) and Eamon O'Halloran (Charities Regulatory Authority) as inspectors, pursuant to section 64 of the Charities Act 2009, in order to investigate the affairs of the charity and to prepare a report thereon.

In March 2017, a formal request to produce documentation, pursuant to section 65(2)(a) of the Charities Act, 2009, was issued to individuals and organisations, who were identified as potentially having information pertinent to the investigation.

The inspectors conducted interviews pursuant to section 64 (4) of the Charities Act 2009 with individuals identified as potentially having information relevant to the investigation.

Drafts of the report (or extracts as appropriate) were furnished to persons in respect of whom there is a reference to or who may be affected by the matters dealt within the report. The inspectors have considered all information and submissions received from those persons. The Charity, and those interviewed, fully co-operated with the inspectors during the course of the investigation.

The investigation findings and conclusions are set out in Section 3 and relate solely to the following matters:

i). Disposal of a significant charitable asset without an adequate, independent valuation being obtained by the trustees
ii). Weaknesses in the governance, management and accounting for public fundraising and donations
iii). Weaknesses in governance and oversight, including in respect of the management of a significant capital project

3. Investigation findings and conclusion

3.1 Disposal of a significant charitable asset without an adequate, independent valuation being obtained by the trustees

The inspectors found the following matters:

(i) At the date of the last audited accounts of the Charity on 31 December 2014, the partially built cinema was being recorded as an asset on the charity's balance sheet at €3,894,386. The Deed of Assignment dated 20th December 2016 gave effect to the transfer of substantially all of the assets (for example, the charity retained their bank account) and liabilities of the charity to a third party. The funding received by the Charity up to the point of transfer totalled circa €5.4m (€7.3m including the value of the site).

Despite the significance of the value of the asset and the associated funding received by public sector bodies and public donations, an independent valuation of the asset was not obtained by the charity trustees prior to the transfer of the charitable asset to an independent, third party operator. Consequently, the inspectors were unable to verify whether the trustees had obtained the maximum benefit on behalf of the charity (and funders) prior to entering into the formal interparty agreement.

(ii) The inspectors were informed that the value of the liabilities transferred was the consideration at the time for the transfer of the charity asset. From our review, the only liabilities that appear to exist are the WDC loan of €650,000 and, per the third party, amounts not included in the project budget of c€98,000, €70,000 of which was for the Charity legal advisor. New conditions were input into the interparty agreement outlining what repayment would be required from the third party if certain conditions were not met, specifically in the event the property was not used as a cultural cinema.

(iii) There was an absence of any form of suitable evidence to demonstrate that the charity trustees entered into any form of a competitive disposal process, including seeking to source competitive bids within the private sector or charitable sector. The absence of this competitive disposal process further undermines the ability to fully determine or assess whether the charity trustees obtained the best available return at the time of disposal.

Conclusion(s):

The charity trustees did not demonstrate adequate or reasonable levels of care and skill prior to the disposal of the charitable asset. The absence of any independent valuation and/or competitive disposal process prior to the disposal of the charitable asset means that the trustees did not have full visibility of its potential full market value. Considerable public funding and public donations were provided to the charity to construct a cultural cinema asset for the benefit of the public. While the asset was not fully complete at the time of disposal, significant public monies had been expended. The decision of the trustees to enter into negotiations with one preferred operator effectively removed any potential opportunity for the asset to remain within the charitable sector, which may have been a motivation of public donation.

3.2 Weaknesses in the governance, management and accounting for public fundraising and donations

The inspectors found the following matters:

(i) The Charity obtained fundraising/donations from many sources since its incorporation. Based on the charities records provided to the inspectors, the total amount of monies donated by the public were €360k. In the most recent audited financial statement for year end 31 December 2014, the figure recorded is €341k. As per section 1 of this report, the fundraising schedule included in the interparty Agreement states fundraising amounts received totalled €301k. As a result, we were unable to corroborate fully or quantify the scale and extent of private donations received. The failure to account for private donations as income in the regular accounts of the charity contributed to this difficulty. In addition to this there were weaknesses in the controls in operation to govern the fundraising/donation process.

(ii) Fundraising/donations were included in liabilities under "Grants and other funding received" and these were recorded by the charity as amounting to €341k. In line with generally accepted accounting principles, all fundraising/donations received, not being refundable in any circumstances, should have been included as income in the 'profit & loss account' in the year they occurred. It was erroneous to include donations as a liability. A liability, as defined in FRS 12, is a present obligation of the entity arising from past events, with the probability of a transfer of economic benefits to settle that obligation. These funds were never due to be paid back. In addition to the above, no income was recorded in the financial statements in any of the above years. We were informed by the Charity's accountant that the company recorded income of c€41k in the financial statements for the year ended 31/12/2007 but have not recorded income since this date.

(iii) The charity trustees did not provide adequate evidence of due consideration of the assessment of the net realisable or fair value of the charitable assets or provisions in respect of construction contracts at each balance sheet date in accordance with generally accepted accounting principles. Furthermore, the trustees did not provide adequate disclosure, within the financial statements, of the accounting policy adopted for government grants; the effects of government grants on the results for the period and/or the financial position of the enterprise; and unfulfilled conditions and other contingencies not recognised in income. The absence of such disclosure, or indeed potential resulting adjustments to the financial statements, may have adversely impacted the ability of funders to fully assess the financial position of the charity (and the value of the underlying asset) when making decisions in respect of any additional funds to be advanced.

Conclusion(s):

No income was recorded after 2007 by the Charity when income was in fact generated in the form of donations.

Specifically, in relation to donations received from the public, it was incorrect to include these as liabilities as there was never an indication these amounts would be due back to those who donated.

In the financial statements, while the costs of putting the asset in its present location and condition were recorded, no consideration was given to an assessment of the net realisable or fair value of the assets at each balance sheet date.

3.3 Weaknesses in governance and oversight, including in respect of the management of a significant capital project

The inspectors found the following matters:

(i) The board minutes reviewed for the period 2013 to end 2016 by the inspectors did not reflect the depth of analysis and review we would expect from a charity managing a capital project of this scale. There was insufficient evidence of formal documented review by the Board trustees of ongoing progress and management of costs. The Charity explained that much of this activity was not formally documented but was performed verbally.

(ii) Through review of board minutes and other information supplied, there was limited evidence of robust scrutiny by the charity trustees of decisions impacting the strategic direction and financial position of the charity and how these decisions advanced the charity's core objective. For example, there was an absence of any formal documented strategic workplan, including key activities, responsibilities and timelines.

(iii) There was limited evidence that its status as a registered Charity was regularly considered or reflected upon, nor were the responsibilities of board members as charity trustees discussed on a regular basis.

(iv) The Charity did not keep funders up to date on decisions made by the Board in relation to the project or provide regular status updates on progress, costs and funding remaining. The Inspectors note that the Charity did not inform the funders that it had signed a new public works contract in 2012 at a time when funding was not in place to meet all costs.

(v) The Charity did not maintain adequate records of who served as a director in the charity with conflicting information recorded with the Companies Registration Office (CRO), the audited financial statements and those actively acting as directors in practice.

(vi) The Charity did not have documented policies and procedures to govern the key processes and procedures within the organisation including, but not limited to, internal financial controls, budgeting and fundraising.

(vii) The auditor to the charity resigned on 13th October 2016 citing concerns over corporate governance. Asked by the inspectors to expand on this, the auditor pointed to concerns he had in the manner the trustees were interacting with the Charity Regulatory Authority. While the board sought legal advice after the auditor notified them of his resignation, there is no evidence the charity trustees took action to address the corporate governance concerns of the retiring auditor.

(viii) The inspectors note there were weaknesses in the internal financial controls governing the financial reporting and accounting processes including, but not limited to, lack of segregation of duties, no defined budgetary process and fundraising/donation records maintained.

(ix) On the 3rd July 2017, the Charity passed an ordinary resolution to appoint a liquidator. Based on a review of board meeting minutes of the charity in 2015 and 2016 it is apparent to the Inspectors that liquidation had been under consideration by the trustees of the charity. The inspectors noted with concern that the Charity did not inform the Charities Regulatory Authority on a timely basis that they had entered liquidation despite the fact that the Charity's affairs were the subject of a statutory investigation under the Charities Act 2009. The Inspectors also note that up to date accounts were not filed with the Companies Registration Office up to point the company entered a creditors voluntary liquidation. The inspectors further note, the liquidator submitted a form E2A "notice of resignation of liquidator" on 27th April 2018.

Conclusion(s):

From initiation and over the subsequent years, the Charity did not ensure it had the appropriate corporate governance structure in place to govern and oversee the activity and decisions made by the Charity. The necessity for suitable skills, experience and a defined governance structure was essential considering the level of public funding involved and the size of the capital project that was being managed by the Charity.

The absence of formal documentation of decisions meant that the trustees were unable to provide evidence of a robust challenge to key decisions which impacted upon the charitable affairs. This was exacerbated by the absence of Board renewal and the resulting absence of the necessary skills to oversee a project of this nature.

The trustees failed to ensure consistency of reporting between the financial statements and CRO filings in respect of those acting as directors and trustees.

4. RECOMMENDATIONS

Based on the investigation findings and conclusions, the inspectors make the following recommendations to the Charities Regulatory Authority:

1. The Charities Regulatory Authority should review the need for guidance in relation to trustees legal duties in the management and control of their charities in light of the conclusions and findings contained in this report.
2. Under s28, the Charities Regulatory Authority should consider furnishing a copy of this report as it deems relevant.