

BIRMINGHAM CITY COUNCIL

MEETING OF THE CITY COUNCIL

TUESDAY, 13 JUNE 2023 AT 13:30 HOURS
IN THE COUNCIL CHAMBER (EXTRAORDINARY MEETING),
COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

1 NOTICE OF RECORDING

Lord Mayor to advise that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite [\(please click this link\)](#) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 DECLARATIONS OF INTERESTS

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

3 **SPECIAL BUSINESS - Highbury - A Report on Property Matters for Decision by the Council as Trustee**

30 minutes allocated (1330-1400)

Councillor Marcus Bernasconi to move the following recommendations:

"That Full Council sitting as 'Council as Trustee:

1. Notes that the transfer of property proposed in this report by the Council as Trustee to CHT and BCC raises potential conflicts of interests and these conflicts have and will continue be mitigated by: engaging external legal advisors to advise the Council as Trustee on the proposed disposals, seeking Charity Commission's prior approval and consent to any actions taken under this report, obtaining independent external valuations on all Trust assets affected, and by excluding Council Members who are connected to CHT from debating or voting on this report.
2. Authorises an application made to the Charity Commission to obtain either an Order for the disposal of Chamberlain House to Birmingham City Council free of any ongoing charitable trusts, and to apply the net proceeds of sale of any such disposal as directed by the Charity Commission by way of Scheme (if required) or otherwise applied in furtherance of Highbury Trust objects.
3. Authorises the City Solicitor (or their delegate) to negotiate and settle any documents to give effect to transfer of Chamberlain House to Birmingham City Council by way of a Charity Commission Order.
4. Agrees in principle the grant of a 125-year lease at a peppercorn rent to the Chamberlain Highbury Trust registered charity number 1169845 (CHT) of Highbury Hall and adjoining trust land more particularly delineated in red on the plan attached at **Appendix A** subject to compliance with charity law and obtaining the Charity Commission's prior consent by way of Order.
5. Agrees that the net proceeds of sale raised from the disposal of surplus Trust property, namely 98 Queensbridge Road at commercial market valuation and in accordance with Charities Act 2011, shall accrue to Highbury Trust.
6. Notes that a further report on progress will be presented to Full Council in approximately 6 months to update Full Council as Trustee on progress achieved and further decisions of Full Council as required.
7. Authorises the City Solicitor and Monitoring Officer be authorised to continue to seek external professional legal advice, independent property valuations, negotiate lease terms with CHT and make applications to the Charity Commission for the purpose of progressing and implementing the above recommendations."

Birmingham City Council

City Council

13 June 2023



Subject: Highbury - A Report on Property Matters for Decision by Council as Trustee

Report of: Cllr Marcus Bernasconi – Chair - Trusts and Charities Committee

Does the report contain confidential or exempt information? ☐ Yes ☒ No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:

1 Executive Summary

- 1.1 To seek formal approval from Council as Trustee to the Motions proposed on the matters set out below in respect of the transfer of property from Highbury Trust namely: the disposal of Highbury Hall, adjoining parkland, and estate buildings (the Hall) to Chamberlain Highbury Trust (CHT) and the transfer of Chamberlain House to Birmingham City Council for the continued use of the site as a Special Educational Needs School.

2 Recommendations

- 2.1 That Full Council sitting as 'Council as Trustee':

- (i) Notes that the transfer of property proposed in this report by the Council as Trustee to CHT and BCC raises potential conflicts of interests and these conflicts have and will continue be mitigated by: engaging external legal advisors to advise the Council as Trustee on the proposed disposals, seeking Charity Commission's prior approval and consent to any actions taken under this report, obtaining independent external valuations on all Trust assets affected, and by excluding Council Members who are connected to CHT from debating or voting on this report.
- (ii) Authorises an application made to the Charity Commission to obtain either an Order for the disposal of Chamberlain House to Birmingham City Council free of any ongoing charitable trusts, and to apply the net proceeds of sale of any such disposal as directed by the Charity Commission by way of Scheme (if required) or otherwise applied in furtherance of Highbury Trust objects.

- (iii) Authorises the City Solicitor (or their delegate) to negotiate and settle any documents to give effect to transfer of Chamberlain House to Birmingham City Council by way of a Charity Commission Order.
- (iv) Agrees in principle the grant of a 125-year lease at a peppercorn rent to the Chamberlain Highbury Trust registered charity number 1169845 (CHT) of Highbury Hall and adjoining trust land more particularly delineated in red on the plan attached at **Appendix A** subject to compliance with charity law and obtaining the Charity Commission's prior consent by way of Order.
- (v) Agrees that the net proceeds of sale raised from the disposal of surplus Trust property, namely 98 Queensbridge Road at commercial market valuation and in accordance with Charities Act 2011, shall accrue to Highbury Trust.
- (vi) Notes that a further report on progress will be presented to Full Council in approximately 6 months to update Full Council as Trustee on progress achieved and further decisions of Full Council as required.
- (vii) Authorises the City Solicitor and Monitoring Officer be authorised to continue to seek external professional legal advice, independent property valuations, negotiate lease terms with CHT and make applications to the Charity Commission for the purpose of progressing and implementing the above recommendations.

3 Background

Governance arrangements

- 3.1 The City Council is Sole Corporate Trustee for a number of charitable trusts. Whilst under the Council's Constitution Trusts and Charity Committee deal with the day-to-day management of the Council's extensive trust portfolio, only Full Council sitting as "Council as Trustee" can sanction the disposal of trust land hence the need for this report.
- 3.2 Each charitable trust is governed by the deed under which it was established, the powers and restrictions contained in charity law, and subject to the jurisdiction of the Charity Commission which, in more complex circumstances may need to authorise certain actions taken by BCC as Trustee by way of Scheme or Order.
- 3.3 Generally, a disposal of charitable land can only occur where the Trustees have either an express power of disposal within the Deed or Charity Commission Scheme or can rely on an implied power under the Trusts of Land and Appointment of Trustees Act 1996 (the "1996 Act"). In circumstances where this not apply, or where the disposal is to a connected party (as is the case with Chamberlain House and Highbury Hall) the Trustee will need the Charity Commission to issue an Order to

permit this, and they will only do so if considered expedient in the interests of the Trust.

- 3.4 Highbury Trust comprises covers 12.66 hectares situated in the Moseley Ward. Highbury Hall is mainly used by the Council, via Civic Catering, as a conference/ banqueting and wedding venue, which has safeguarded the property and provided income for Highbury Trust. Land directly adjacent to Highbury Hall is managed by the Council as part of Highbury Park and Chamberlain House which fronts onto Queensbridge Road was previously used as office accommodation by BCC Social Services but is currently occupied by Uffculme Special Educational Needs School whose main school building next door to Chamberlain House, also on Queensbridge Road.
- 3.5 The historic use of Highbury Hall as a conference/ banqueting and wedding venue by the Council is seen as problematic by the Charity Commission as the activity is not charitable, although it does generate income for the maintenance for Highbury Trust. The use and maintenance of Chamberlain House by BCC Education as a Special Educational Needs School, whilst again maintaining this trust asset, is outside the charitable objects of Highbury Trust and therefore needs addressing with the approval of the Charity Commission.
- 3.6 There are several additional properties on the site which will either be sold or transfer to CHT. 98 Queensbridge Road is currently unoccupied and is to be sold and the proceeds returned to Highbury Trust. 92 Queensbridge Road is currently used by the Four Seasons Gardeners Group and managed by BCC Adult Services. The occupation will continue as a subtenant of Chamberlain Highbury Trust. The Gatehouse Lodge situated at the entrance to Highbury Park on Yew Tree Road is currently occupied by an ex-service employee. CHT are keen to retain the Lodge in their management and to let it on market terms to generate income for CHT.
- 3.7 The CHT was registered in 2017 at the specific request of the Council with a view to taking a lease of Highbury Hall in order to maximise charitable activity at the site and to leverage funding from third parties to fund the maintenance and upkeep of this listed building. To this end CHT have secured a substantial initial development grant (Phase 1) from the National Heritage Lottery Fund (NHLF) and engaged a professional team to work up a Development Plan that aims to restore Highbury to its former glory and ensure its long-term future. This Development Plan (feasibility study) will be the subject of a further grant application to NHLF and if successful will release Phase 2 funding increasing the total NHLF contribution to £4.632m. This funding will then be used by CHT to carry out major programme of works which include the refurbishment of Highbury Hall and adjoining land. If the project is successful, works will be complete in line with the CHT Development Plan. A NHLF pre-requisite of Phase 2 funding is an assurance that CHT have or will have a legal interest in Highbury Hall to release the grant funding to carry out the development works, hence the need for this report.
- 3.8 The Council Executive have agreed to provide CHT grant funding of £3.5m towards the Project, in addition to underwriting CHT's fundraising activity of up to £2m.

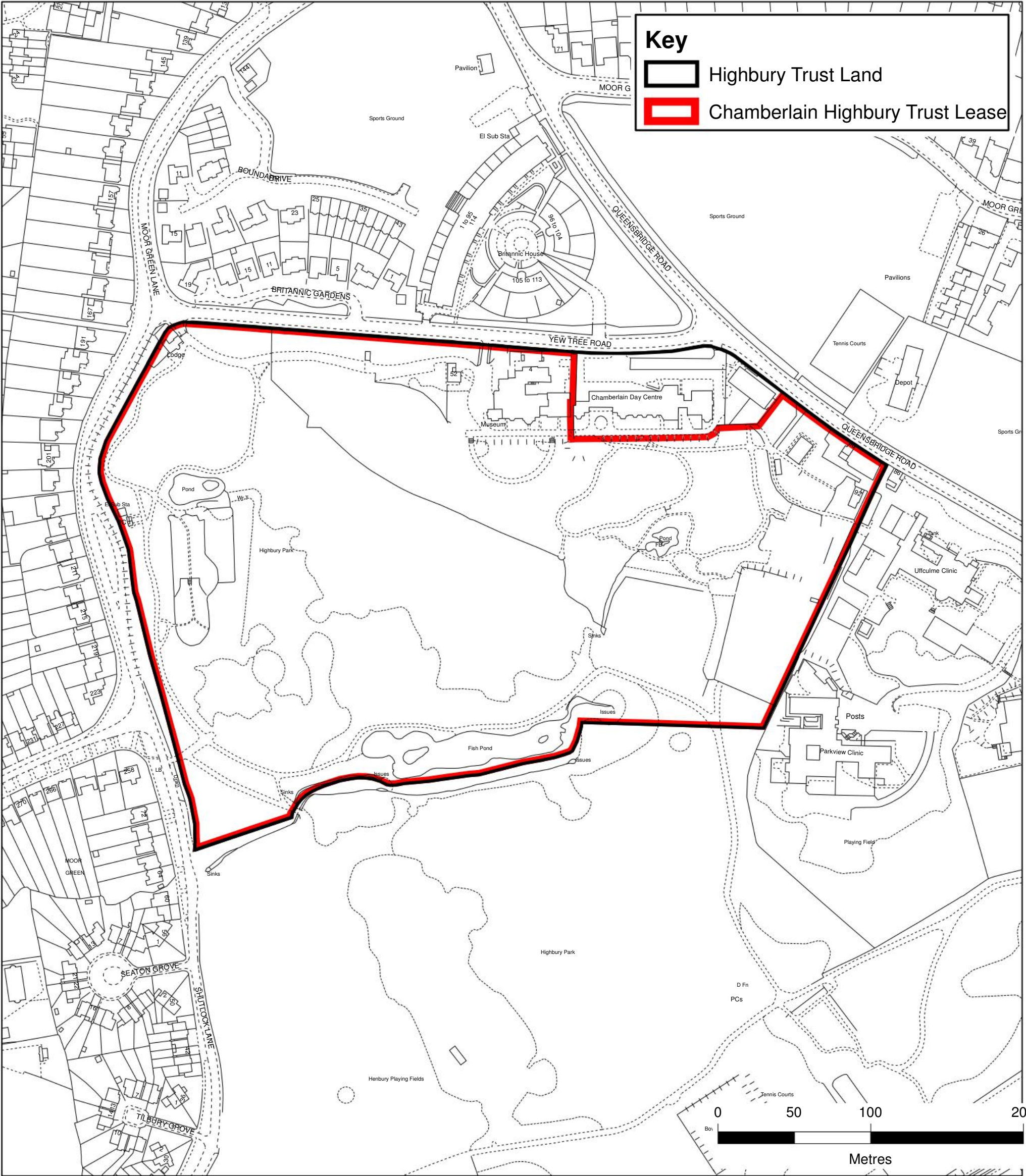
- 3.9 External legal advice has been sought and confirmed that the proposed disposal of Highbury Hall by grant of a lease to CHT for less than best value is permitted by an exception to ss117-121 of the Charities Act 2011 being a lease to another charity for less than best value where the grant of the lease furthers the objects of the freehold owner. As the Council are represented on CHT, this is likely to be a connected person transfer and will therefore require Charity Commission consent. The grant of a 125-year lease was previously considered at the meeting of Trusts and Charities Committee on 17th January 2018 and approved at the meeting of Council as Trustee on 18th March 2018. However, it is appropriate to refresh that approval now that a substantial funding stream has been identified by CHT, which together with grant approved by the Council Executive creates a unique opportunity to restore Highbury Hall and maximise the public access and enjoyment of the property and adjoining parkland. The initial Heads of Terms for the proposed 125-year lease to CHT are attached at **Appendix B**.
- 3.10 The disposal by lease of Chamberlain House is more complex in that it is considered a connected person transfer, in that the Council as Trustee is proposing to transfer ownership to the Council as Local Authority, and the trust property to be transferred will not be replaced. Therefore a Scheme or Order of the Charity Commission will be required. Before agreeing to the disposal the Charity Commission will require an independent arms-length valuation of the property, require public consultation to be undertaken to gauge public opinion and they will need to be satisfied that the disposal is in the best interests of the Trust. Any proceeds of sale will revert to Highbury Trust or as may be otherwise applied in accordance with the direction of the Charity Commission.

4 Matters to be Determined


- 4.1 The future use and operation of Highbury Hall by working with CHT to take advantage of a singular opportunity secure third-party funding and secure and maximise the charitable activity at Highbury Hall and remove Chamberlain House from the Highbury Trust and re-assign the net proceeds of disposal to maximise charitable activity at Highbury.

5 Appendices

- A. Plan of land to be leased to Chamberlain Highbury Trust
- B. CHT Lease – Heads of Terms




AREA EDGED BLACK	12.58	HECTARES APPROX.	31.10	ACRES APPROX.
AREA EDGED RED	11.91	HECTARES APPROX.	29.45	ACRES APPROX.



Birmingham City Council

Peter Jones BSc, FRICS
 Director of Property
 Birmingham Property Services
 PO Box 16255
 Birmingham, B2 2WT

Chamberlain Highbury Trust Lease
 Yew Tree Road
 Moseley



SCALE	DRAWN	DATE
1:2,500 @ A3	Bharat Patel	29/09/2016
O.S.Ref SP0682NE		

AS SOLE CORPORATE TRUSTEE

Our Ref: BPS/AM/NGO/Highbury

Date: 2nd February 2023

Company Secretary
The Chamberlain Highbury Trust
4 Yew Tree Road
Birmingham
B13 8QG

WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

Dear Sirs

Re: Proposed Lease of Highbury Estate

Further to previous communications I now set out below the terms and conditions which I am prepared to recommend for formal approval:

Demise: Land at Highbury Estate as outlined in red on the attached plan number 15429 including all premises within.

Landlord: Birmingham City Council 'as trustee' acting on behalf of Highbury (registered charity no. 1039194) c/o The Council House, Victoria Square, Birmingham B1 1BB

Tenant: The Chamberlain Highbury Trust (registered charity no. 169845) (Company number 10157307) c/o Highbury, 4 Yew Tree Road, Birmingham, B13 8QG

Tenure: The tenant will enter into an Agreement for a Lease prior to the grant of a Lease. The Lease will be on terms agreed by the two parties and become a formal Schedule to the Agreement. The duration of the Agreement for Lease will be five years from a date to be agreed but to commence no later than 31st December 2023 (the shortstop date) and the Lease will be for 125 years from a date to be agreed but within the above five year period (the longstop date). The Agreement for Lease will be for a maximum term of five years and while the Lease can become operational at any time before that point at the Tenant's request this is first subject to:

- a successful Stage 1 bid to the Heritage Lottery Fund for funds for the full refurbishment/conversion of 'Highbury'
- production of a scheme for the refurbishment of 'Highbury' agreeable to the Highbury Trust and sufficient to be used for HLF stage 2 bids
- obtaining all appropriate consents including those from the Charity Commission, the City Council as Trustee, valid planning consent to the proposal, valid Listed Building consent
- continuing compliance with the Conditions of Grant Aid recently granted or may subsequently be granted

- a Business Plan for the future management of the Highbury Estate agreeable to the Highbury Trust

The lease will also be subject to evidence that operations undertaken on the land continue to be in line with the lease terms and compatible with the charitable objects of the Highbury Trust and the Chamberlain Highbury Trust and to the production of an annual report and accounts to the City Council. The Lease will be granted outside the security of tenure provisions of the Landlord and Tenant Act 1954.

Repairs:

The premises will be let in its current condition and the Lessee will be required to fully refurbish the premises to put and keep them in a good and substantial condition in line with a scheme of works formally approved with the landlord and thereafter be responsible for all internal and external repairs and maintenance to the premises and boundaries.

Alterations:

No alterations, adaptation or restoration to be undertaken thereafter without first obtaining the written consent of the Trust or its duly appointed representative (consent not to be unreasonably withheld) and only then following receipt of appropriate Listed Building Consent.

Rent:

The lease will be granted at a peppercorn rent throughout, without review, in recognition of the completion of the full refurbishment scheme for the Highbury premises and the on-going management of the Highbury Estate.

Outgoings:

The Tenant is to be responsible for all existing and future rates taxes charges assessments and outgoings, including (but not limited to) business rates, gas, water and electricity or other utility charges, assessed upon the Premises.

Insurance:

The tenant is to secure and maintain insurance on the premises sufficient to provide for the reinstatement of the premises in the event of damage or destruction and effect and maintain adequate Public Liability Insurance for the operation of the premises and provide to the City Council a copy of the insurance certificate(s), if demanded.

Alienation:

During the course of the Agreement for Lease the Tenant is permitted to continue the subletting of the parts of the Estate already sublet and/or renew the terms of those occupations but not so as to interfere with the programming of the proposed refurbishment of Highbury.

During the Lease the Tenant is not to:

- assign the whole or any part of the premises without the consent of the Landlord (not to be unreasonably withheld)
- sublet any part of the premises, for a term of more than three years without the prior written approval of the Landlord, consent not to be unreasonably withheld.
- use the premises as security for finance, mortgage, charge or grants etc., except as approved by the landlord.

User: To be used only as a wedding venue, restaurant, hotel and conference centre and meeting space open to the public and for educational, cultural and art activities or such other uses as the Trust will agree to including areas for residential conversion but not to allow such other uses without first obtaining the written consent of the landlord or its duly appointed representative (consent not to be unreasonably withheld).

Community hire: The Tenant is to make the premises available to hire at no charge or open to the public at no charge and with no other event in progress for 12 days per year.

Other terms: The tenant will indemnify and keep indemnified the City Council against all costs, claims, charges, negligence etc. whatsoever in relation to the tenant's occupation and use of the premises.

The Tenant will be responsible for ensuring that the use and activities of the accommodation complies with all statutory and regulatory requirements of any kind, whether identifiable now or in the future.

The Tenant is not to place or permit to be placed any part of the accommodation, materials of a flammable and combustible nature nor to do or omit to do anything which renders any insurance effected on the Premises void or voidable or which causes the insurance premium or premiums to be increased and to comply with all recommendations of the insurers of the Premises.

The Lessee is not to cause any unreasonable nuisance or annoyance to other occupiers or local residents through the use of the accommodation or the premises and will keep the premises clean and tidy at all times.

The premises or parts thereof are not to be used for any illegal or immoral purpose nor hired out for use for extreme political or extreme religious purposes

Where the tenant applies for a license for the sale of alcohol to share the terms of the license with the landlord and to comply with the terms of the license.

Documentation The Tenant will complete a formal agreement for lease and a lease to be drafted by the City Council's Solicitor which will include the terms set out above but also such other clauses as is necessary to give effect to the documentation.

Costs: The Tenant will be required to pay the City Council's reasonable and proper legal costs and be required to pay a contribution towards BPS Surveyors and administrative costs.

Stamp Duty
Land Tax
S.D.L.T.): In accordance with the provisions of the Finance Act 2003 the Tenant will be responsible for the payment of any Stamp Duty Land Tax payable on the transaction.

I would be grateful if you could give full consideration to the above terms and confirm they are acceptable by returning a signed copy of this letter. On receipt of your written acceptance I will seek final internal approval and instruct my colleagues in Legal Services

to issue draft documents. Please also send contact details of your legal representatives who may be acting for you in this regard. Please note this offer is only valid for a maximum of six months from the date of this letter after which the Highbury Trust will be at liberty to reconsider the terms of any proposal..

I look forward to hearing from you.

Yours sincerely

Nigel Oliver
Asset Manager

Enc: plan no. 15429

We (The Chamberlain Highbury Trust) hereby confirm agreement to the above terms and conditions

Signed **Date.....**

Print name **Date.....**

As of the Chamberlain Highbury Trust.

Corporate Landlord
Birmingham City Council
PO Box 16255
Birmingham, B2 2WT

sat-nav address: 10 Woodcock Street, Birmingham, B7 4BG (closest location)

Nigel Oliver – Property Manager
email: nigel_g_oliver@birmingham.gov.uk

www.birmingham.gov.uk

