

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

TRUSTS AND CHARITIES COMMITTEE

WEDNESDAY, 21 SEPTEMBER 2016 AT 10:30 HOURS
IN COMMITTEE ROOM 6, 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 Internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs.

The whole of the meeting will be filmed except where there are confidential or exempt items.

2 APOLOGIES

To receive any apologies.

3 - 14

3 MINUTES TRUSTS AND CHARITIES COMMITTEE - PUBLIC

To note Part 1 of the Minutes of the last meeting held on 20 July 2016

4 MATTERS ARISING

To discuss matters arising.

15 - 20

5 REVENUE BUDGET MONITORING 2016/17 - QUARTER 1 (TO 30 JUNE 2016)

Report of the Strategic Director Finance and Legal Services

21 - 26

6 BURBURY PARK - CHARITY COMMISSIONS REGISTRATION NUMBER 1076676 - DISPOSAL OF LODGE

Item Description

27 - 32

7 **SURRENDER AND RENEWAL OF LEASE OF PLAYING FIELD FOR HOWARD PRIMARY SCHOOL (THE ELFORD ESTATE CHARITY - REG NO . 1000692)**

Item Description

33 - 34

8 **SCHEDULE OF OUTSTANDING MINUTES**

To consider all Outstanding Minutes

9 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

10 **AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

11 **EXCLUSION OF THE PUBLIC**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Minutes - Exempt Paragraphs 3 and 4

P R I V A T E A G E N D A

1 **MINUTES TRUSTS AND CHARITIES COMMITTEE - PRIVATE**

Item Description

2 **MATTERS ARISING - PRIVATE**

To discuss matters arising.

3 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

BIRMINGHAM CITY COUNCIL

TRUSTS AND CHARITIES COMMITTEE 20 JULY 2016
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**MINUTES OF A MEETING OF THE
TRUSTS AND CHARITIES COMMITTEE
HELD ON WEDNESDAY 20 JULY 2016
AT 1030 HOURS IN COMMITTEE ROOM 6,
THE COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Habib Rehman in the Chair;

Councillors John Alden; Mick Finnegan; James McKay; David Pears and Paul Tilsley.

821

APPOINTMENT OF COMMITTEE

The following resolution of the City Council was submitted appointing the Committee for the Municipal Year 2016/2017 with the following Members:-

Labour (4)

Councillor Mariam Khan
Councillor James McKay
Councillor Habib Rehman (Chairman)
Councillor Mick Finnegan (Vice-Chairman)

Conservative (2)

Councillor John Alden
Councillor David Pears

Liberal Democrat (1)

Councillor Paul Tilsley

Independent (1)

Councillor Ian Cruise

APOLOGIES

822

No apologies were submitted.

MINUTES

823

RESOLVED:-

That part I of the Minutes of the last meeting of the Trusts and Charities Committee held on 20 April 2016 was noted.

MATTERS ARISING

824

There were no matters arising from the Minutes.

TEERMS OF REFERENCE OF THE TRUSTS AND CHARITIES COMMITTEE

The following terms of reference were submitted:-

(See Document No. 1)

Councillor John Alden proposed and it was agreed that a briefing note be submitted to all Members of the Committee and to all senior officers advising that the Chairman's authority should be sought at the first instance prior to using any assets held in trust (not City owned assets).

The Chairman made reference to the Terms of Reference and stated that at point (a) the comma should be deleted and replaced with the word 'and'.

It was -

825

RESOLVED:-

That the Terms of Reference of the Trusts and Charities Committee be noted.

DATES OF FUTURE MEETINGS

It was –

826

RESOLVED:-

That the Trusts and Charities Committee note the schedule of meetings for 2016/17:-

2016

21 September
9 November
14 December

2017

18 January
1 March
19 April

All meetings will be held at 1030 hours at the Council House, Victoria Square, Birmingham.

DECLARATIONS OF INTERESTS

827

RESOLVED:-

Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest is declared, a Member must not speak or take part in that agenda item. Any declarations will be recorded in the Minutes of the meeting.

No declarations of interests were declared.

At this point in the meeting the Chairman proposed, and it was agreed, to consider Agenda Item No. 20.

OTHER URGENT BUSINESS (REPORTS BY OFFICERS)

A. Highbury Trust – Grant Agreement between Chamberlain Highbury Trust (“CHT”) and Highbury Trust

The following report of the Strategic Director of Finance and Legal Services was submitted:-

(See Document No. 2)

Simon Buteux, Birmingham Conservation Trust and Les Sparks, Chair of Trustees, CHT introduced the report and highlighted the salient points.

It was -

828

RESOLVED:-

That the approval of the Chairman of the Trusts and Charities Committee on behalf of the Council as Trustee, to enter into a Grant Agreement with “CHT” in the sum of £84,000 from the charity’s unrestricted income, to be paid in two equal instalment of £42,000 on the 20 July 2016 and 3 October 2016 be noted.

B. Highbury Community Orchard – Installation of a temporary toilet

Les Sparks, Chair of Trustees, CHT stated that the Highbury Orchard Community (HOC) wished to install a temporary organic composting toilet at Highbury. The HOC will take full responsibility for the costs of installation and maintenance, and the construction can be removed without permanent impact on the area. The toilet is similar to those that have been previously erected on

a number of Council allotment sites. The HOC require the landowners consent in order to erect the toilet and were therefore, seeking the approval of the Trusts and Charities Committee for the work to go ahead.

Members had no objection to the installation of a temporary organic composting toilet and it was –

829

RESOLVED:-

That approval be given to the installation of a temporary organic composting toilet in Highbury Community Orchard and that City Council officers be delegated to assist if required.

C. Response to Outstanding Minute Number 571 (187 Harborne Lane) – Director of Property to attend a future meeting

Peter Jones, Director of Property advised that it was the developer's fault that work was completed without prior permission as part of the land in Selly Oak Park was held in trust. He assured Members that the correct procedures will be followed in the future.

It was –

830

RESOLVED:-

That the verbal report be noted and Outstanding Minute No. 571(i) be discharged.

The Chairman proposed, and it was agreed, to return to Agenda Item No. 9.

ANNUAL REPORT AND ACCOUNTS – BIRMINGHAM MUNICIPAL CHARITY FOR THE PERIOD 2015/16

The following report of the Strategic Director – Finance and Legal Services was submitted:-

(See Document No. 3)

Mark Szurminski, Senior Business Analyst, Finance and Legal Services, introduced the report and responded appropriately to comments made by Members.

It was -

831

RESOLVED:-

- (i) That the Trusts and Charities Committee, acting on behalf of the Council as Trustee, approve the Annual Report and Accounts as set out in Appendix1 attached to the report;

- (ii) That the Trusts and Charities Committee acting on behalf of the Sole Corporate Trustee authorise officers in Corporate Finance to submit all appropriate and necessary documentation to the Charity Commission in respect of recommendation 2.1 in the report;
 - (iii) That Outstanding Minute No. 812 be discharged.
-

BIRMINGHAM MUNICIPAL CHARITY – REVISED MECHANICS OF FUNDING

The following report of the Strategic Director – Finance and Legal Services was submitted:-

(See Document No. 4)

Mark Szurminski introduced the report and highlighted the salient points.

Members discussed the annual transfer of £50,000 from the trust's endowment fund to the unrestricted funds to meet charitable objectives and suggested that an amendment be made to the transfer figure.

In response to a question raised concerning future funding requests, Mark Szurminski advised that there was one further application from Moseley Rugby Club Foundation for £500.

Councillor Paul Tilsley declared a non-pecuniary interest as he was a Member of the Moseley Rugby Club.

A brief discussion ensue and it was –

832

RESOLVED:-

- (i) That the amount of annual transfer from the Trust's endowment fund to the unrestricted funds to meet charitable objectives be amended to read £25,000 and not £50,000 as stated in the report;
 - (ii) That Outstanding Minute No. 812 be discharged.
-

BIRMINGHAM MUNICIPAL CHARITY – AWARD OF GRANT : BILLESLEY COMMON ACTION PLAN (VALLEY RIVERSIDE PROJECT)

The following report of the Strategic Director – Finance and Legal Services was submitted:-

(See Document No. 5)

Mark Szurminski introduced the report and highlighted the salient points.

It was –

833

RESOLVED:-

- (i) That approval be given to award a grant from the “BMC” to the charitable organisation as set out in Appendix 3 attached to the report;
- (ii) that officers in Finance and Legal Services be instructed to take all necessary steps to facilitate the award of any grants to any successful applicant, and report back to a future meeting of the Trusts and Charities Committee once the grant application has been completed.

REVENUE OUTTURN 2015/16

The following report of the Strategic Director – Finance and Legal Services was submitted:-

(See Document No. 6)

Mark Szurminski introduced the report and responded appropriately to comments made by Members.

834

RESOLVED:-

That the Trusts and Charities end of year balances for the financial year ending 31 March 2016 be noted.

ANNUAL REPORT AND ACCOUNTS – CROPWOOD TRUST FOR THE PERIOD 2015/16

The following report of the Strategic Director – Finance and Legal Services was submitted:-

(See Document No. 7)

Mark Szurminski introduced the report and highlighted the main points.

It was -

835

RESOLVED:-

- (i) That the Trusts and Charities Committee, acting on behalf of the Council as Trustee, approve the Annual Report and Accounts as set out in Appendix 1 attached to the report;

- (ii) That the Trusts and Charities Committee acting on behalf of the Sole Corporate Trustee authorise officers in Corporate Finance to submit all appropriate and necessary documentation to the Charity Commission in respect of recommendation 2.1 in the report;
- (iii) That Outstanding Minute No. 813 be discharged.

**ANNUAL REPORT AND ACCOUNTS – CENTRE FOR THE CHILD TRUST
FOR THE PERIOD 2015/16**

The following report of the Strategic Director – Finance and Legal Services was submitted:-

(See Document No. 7)

Mark Szurminski introduced the report and stated that he would investigate whether there were any future trust fund raising activities scheduled within the next twelve months.

It was -

836

RESOLVED:-

- (i) That the Trusts and Charities Committee, acting on behalf of the Council as Trustee, approve the Annual Report and Accounts as set out in Appendix 1 attached to the report;
- (ii) That the Trusts and Charities Committee acting on behalf of the Sole Corporate Trustee authorise officers in Corporate Finance to submit all appropriate and necessary documentation to the Charity Commission in respect of recommendation 2.1 in the report.

**SURRENDER AND RENEWAL OF LEASE AT 187 HARBORNE LANE -
SELLY OAK PARK (REGISTERED CHARITY No. 522877)**

The following report of the Director of Property was submitted:-

(See Document No. 8)

Nigel Oliver, Property Manager, Birmingham Property Services introduced the report and highlighted the salient points.

Members congratulated officers that had successfully negotiated an increase in rent review charges and that the lease renewal contract had reduced from twenty five years to seven years.

It was -

837

RESOLVED:-

- (i) That the Trusts and Charities Committee approve the proposal to accept the surrender of the existing lease and grant, two new leases on the same land, each for 125 years;
- (ii) that approval be given to the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust, including change of use to permit uses as described in C2 and C2 of the Town and Country Planning (Use Classes) including student accommodation;
- (iii) authorised the recommendations of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval;
- (iv) authorised any further approval necessary sought from the Charity Commission or descendants of the original transferors of the land, or other bodies as appropriate and to agree to make any applications necessary for appropriate powers of disposal;
- (v) authorised the City Solicitor to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation;
- (vi) authorised the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions;
- (vii) that Outstanding Minute No. 571 (iii) be discharged.

**CROPWOOD ESTATE – DISPOSAL OF FORMER CARETAKERS
COTTAGE, SPIREHOUSE LANE**

The following report of the Director of Property was submitted:-

(See Document No. 9)

Nigel Oliver, Property Manager, Birmingham Property Services introduced the report and highlighted the salient points. He stated that Members had received a briefing note as further explanation to the proposed disposal.

Members requested whether the money from the sale of the property could be used to refurbish the swimming pool on site as an investment to the area.

Nigel Oliver stated that he would investigate the request.

It was –

838

RESOLVED:-

- (i) That approval be given to the freehold interest of the land as identified in Appendix 1 attached to the report to be disposed;
- (ii) that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval once it is declared surplus to their requirements by Education Infrastructure officers;
- (iii) that approval be given to the terms of any disposal being delegated to the Director of Property who will work with external agents to secure appropriate valuation advice to comply with statutory requirements of the Charities Act 2011;
- (viii) that authority be given to the City Solicitor to negotiate, execute and complete all legal documentation to give effect to the above recommendations.

ANNUAL REPORTS AND ACCOUNTS – 2014/15 BODENHAM TRUST

The following report of the Strategic Director of Finance and Legal Services was submitted:-

(See Document No. 10)

Mark Szurminski introduced the report and highlighted the salient points.

Members requested a list of responsible Trustees for the Bodenham Trust.

839

RESOLVED:-

That the Annual Reports and Accounts for the Bodenham Trust be noted.

**ANNUAL REPORTS AND ACCOUNTS – SIR WHITWORTH WALLIS TRUST
- PERIOD ENDING 31 MARCH 2016**

The following report of the Strategic Director of Finance and Legal Services was submitted:-

(See Document No. 11)

Mark Szurminski introduced the report and highlighted the salient points.

Sanjeev Bhopal, Senior Solicitor, Legal Services, advised that the Jane Gilbert and Sir Whitworth Wallis Trusts had expressed an interest to merge with

Birmingham Municipal Charities but had since declined the interest and both had stated that they wished to consolidate and continue as being individual Trusts in their own right.

It was -

840

RESOLVED:-

That the Annual Reports and Accounts for the Sir Whitworth Wallis Trust be noted.

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted;-

(See document No. 12)

It was -

841

RESOLVED:-

That Outstanding Minute Nos. 571(i), 571 (iii), 812(i), 812(ii) and 813(i) being the subject of reports to this meeting be discharged and that all other Outstanding Minutes be continued.

OTHER URGENT BUSINESS

Selly Oak Park held in Trust - Travellers

842

Members expressed concern that strong defence mechanisms should be erected to deter travellers from entering Trust land and they also requested details of the cost of the clean-up operation where travellers have managed to break through defences.

Councillor Tilsley advised that a meeting was to be held in the very near future with the Police to discuss the issue of travellers and appropriate defence/barrier methods to deter them from entering public open space land. He suggested that 106 monies could be utilised to help build defence barriers and solve the problem.

AUTHORITY TO CHAIRMAN AND OFFICERS

843

RESOLVED:-

The Chairman moved that:-

“In an urgent situation between meetings, the Chairman jointly with the relevant Chief Officer has authority to act on behalf of the Committee.”

EXCLUSION OF THE PUBLIC

844

RESOLVED:-

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Minutes of the last meeting – Exempt paragraph 3

Surrender and Renewal of Lease at 187 Harborne Lane – Selly Oak Park (Registered Charity No. 522877) - Exempt paragraph 3

Birmingham City Council – Council as Trustee

PUBLIC REPORT

Report to:	Trust and Charities Committee	<i>Exempt information paragraph number – if private report:</i>
Report of:	Strategic Director – Finance and Legal Services	
Date of Decision:	21 September 2016	
SUBJECT:	REVENUE BUDGET MONITORING 2016/17 – QUARTER 1 (TO 30 JUNE 2016)	
Key Decision: Yes / No	Relevant Forward Plan Ref: No	
If not in the Forward Plan: (please "X" box)	Chief Executive approved	<input type="checkbox"/>
	O&S Chairman approved	<input type="checkbox"/>
Relevant Cabinet Member(s):	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	All	

1. Purpose of report:
1.1 This report sets out the income and expenditure position for Trusts and Charities as at Quarter 1, (up to 30 June 2016).

2. Decision(s) recommended:
2.1 Committee note the latest income and expenditure position of Trusts and Charities as at 30 June 2016

Lead Contact Officer(s):	Mark Szurminski
Telephone No:	0121 675 0482
E-mail address:	Mark_szurminski@birmingham.gov.uk

3.	Consultation
	Consultation should include those that have an interest in the decisions recommended
3.1	<u>Internal</u> The Chairman of the Committee has been consulted in the preparation of this report.
3.2	<u>External</u> N/A
4.	Compliance Issues:
4.1	<u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u> N/A
4.2	<u>Financial Implications</u> <u>(Will decisions be carried out within existing finance and Resources?)</u> N/A
4.3	<u>Legal Implications</u> Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Legal sanction can follow from either the beneficiaries of the charitable trust and/or Charity Commission. Decisions made by the charity must be expedient in the interests of the charity at all times. The Committee has empowered officers within the Council to discharge certain functions on its behalf as Council as Trustee.
4.4	<u>Public Sector Equality Duty (see separate guidance note)</u> None. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions

5. Relevant background/chronology of key events:

- 5.1 Historically, assets including cash have been bequeathed or gifted to the City Council on trust for a group of beneficiaries. These funds must be maintained in trust both legally and financially and be distinct from City Council's own resources. Each trust has its own objectives or purposes and it is the responsibility of the Trusts and Charities Committee to exercise management decisions of these charitable trusts in accordance with charity law, and Charity Commission guidance.
- 5.2 Each Trust registered with the Charity Commission is required to annually submit an annual Report and Accounts, ten months after the end of the financial year, except where gross annual income is less than £25,000. Below this threshold, external scrutiny is only needed if this is set out in the Charity's governing document. The accounts of such Trusts are required to have been independently examined if gross income is between £25,000 and £500,000, and if the income exceeds £500,000 a full audit is required. An audit will also be required if total assets (before liabilities) exceed £3.26m, and the charity's gross income is more than £250,000
- 5.3 This is the final report in the quarterly series for 2015/16. The information provided in Appendix 2 identifies income and expenditure for the period ending 31st March 2016. May I take the opportunity of informing Members that the figures form part of the City Council's Annual Statement of Accounts process, which are currently in the process of being audited.

6. Evaluation of alternative option(s):

- 6.1 Alternative options are not appropriate for this report.

7. Reasons for Decision(s):

- 7.1 To ensure the Committee is aware of the current financial position for Trusts and Charities.

Signatures	<u>Date</u>
Strategic Director - Finance and Legal Services	

Chairman

List of Background Documents used to compile this Report:

1. Information provided by Directorates'.

List of Appendices accompanying this Report :

1. Detailed Budget Changes and Forecasts
2. Quarter 1 Position 2016-17 Trust Funds.

1. Income & Expenditure Report Quarter 2016/17

- 1.1. No budgets are held on the Trusts' income and expenditure accounts. The financial information provided relates to balances brought forward from previous years and in year movements in expenditure and income.

2. In year Revenue Budget Monitoring and Forecast Outturn 2016/17

- 2.1. The opening balance as at the 1 April 2016 was £27.429m. Income for the quarter was £0.182m, expenditure £0.136 and gains on investments amounted to £0.242m. At the end of the quarter 1 (up to 30 June 2016) the closing balance stands at £27.717m.
- 2.2. An analysis of income and expenditure for each Trust Fund is shown at Appendix 2.

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	DIRECTOR OF PROPERTY
Date of Decision:	21 September 2016
SUBJECT:	BURBURY PARK – CHARITY COMMISSION REGISTRATION NUMBER 1076676 – DISPOSAL OF LODGE
Wards affected:	Aston

1. Purpose of report:

- 1.1 To seek approval to obtain revised powers for the management of Burbury Park, including powers of disposal.

2. Decisions recommended:

That the Committee

- 2.1 notes the Burbury Park Lodge (the "Lodge") will be vacant on the retirement of the current employee
- 2.2 authorises an application is made to the Charity Commission to obtain appropriate powers for the better management of the trust holdings including power of disposal by Charity Commission Scheme, and/or seek an Order from the Commission sanctioning the disposal of designated land
- 2.3 authorises the recommendation of the Trusts and Charities Committee be advanced to a future meeting of the Council as Trustee for approval once it is determined by the Trust, that it is expedient in the interests of the charity to dispose of the Lodge
- 2.4 delegates to the Director of Property to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the Lodge
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation including the applications to the Charity Commission to give effect to the above recommendations and to apprise the Committee of the results of the applications and consultation..

Lead Contact Officers:	Nigel Oliver, Birmingham Property Services
Telephone No:	0121 303 3028
E-mail address:	nigel.g.oliver@birmingham.gov.uk

3. Compliance:

3.1 Consultations:

Internal

The current employee retires in October 2016 and Parks do not intend to require any employee to use the Lodge as their principle residence to comply with their employment contract, therefore the property will be vacant and at risk. Officers in Parks are likely to declare this property surplus to their requirements.

External

Public consultation is not required nor envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the various Charities Acts.

3.2 Are there any relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision making to the Trusts and Charities Committee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust Deed, as amended by any Scheme approved by the Charity Commission.

The Burbury Park is held freehold as the Council as Sole Trustee is responsible for ensuring the Trust is managed in accordance with the governing document and in accordance with charity law and having regard to any relevant Charity Commission guidance.

That the Lodge will be vacant and at risk requires the Trustee to consider and evaluate options for the Lodge. The most appropriate way to do so is first to revise the current Scheme and allow more modern powers including options for the disposal of property. Disposal in this instance includes freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties including the City Council.

The existing Charity Commission Scheme dated 30 June 1999 does not expressly provide a power of disposal for the Lodge itself. Additionally, all the land held by the Trustee has been designated specifically for the use of the objects of the charity (see below use at paragraph 4.2). As the land is 'designated' the Trustee will need to apply to the Charity Commission for appropriate powers and/or an Order from the Commission sanctioning the disposal. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustees Act 1996, which would ordinarily provide an implied statutory power of disposal will not assist on this occasion.

3.3 How will decisions be carried out within existing finances and resources?

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects of the trust and charity law. In all cases it is required that all such disposals be conducted in line with statutory processes set out in the Charities Act 2011 and that the proceeds of any sale be ring-fenced and invested in trust for the Charity. Any disposal of the land, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a ~~qualified~~ qualified valuer. Any fee for this will be reclaimed from any capital receipt. Disposal in this instance means freehold sale or the grant of leases.

Running costs for the lodge are currently covered by the Parks Service on behalf of the Trustee. Disposal will mean there is no continuing cost/liability to the Trust.

3.4 Main Risk Management and Equality Impact Assessment Issues (if any):

The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non- executive functions and are therefore not subject to the Equalities Act 2010 provisions. However, no decision is made until the 'Council as Trustee' has it is determined it is expedient in the interests of the charity to dispose of the Lodge

4. Relevant background/chronology of key events:

- 4.1 Burbury Park was created from the gift from William Middlemore of 1.64 hectares of land on 1st December 1876. Additional areas of land have been acquired to expand the Park but those are not held in trust. The lodge has been used for the accommodation for a park keeper since the original park was laid out. This is Charity no. 1076676 registered from 21st July 1999.
- 4.2 The specific objects of the trust are 'to improve the conditions of life for the inhabitants of the area of benefit without distinction of political, religious or other opinions by the provision and maintenance of a recreation ground and community centre'. The assets of the Trust should be used to advance the objects of the charity.
- 4.3 The proposal to seek a revised scheme is necessary as the current scheme is very limited. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so in this instance will require change. To better protect the assets the Trust must have available appropriate powers to let or if required dispose of property. The objects of the charity are very wide ranging and therefore could be met by other users but a proposal to dispose would enable the property to be brought back into use by others quickly at no cost to the charity but delivering a capital receipt or revenue income from rent.
- 4.4 If disposal is judged to be in the best interests of the charity the preference is to sell the freehold interest as the detached house and small garden can be removed from the trust without detriment to the remainder of the trust land or the wider park and BCC/Trust responsibilities would be brought fully to an end. Alternative means of disposal such as a long lease will also be considered.

4.5 Aims and Objectives of the Charity

Each park is held as a separate trust and decisions need to be in the best interests of that trust.

4.6 Trustee Powers

The charity's constitution is set out within the executed Trust Deed for each park principally the acquisition deeds or as amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers exist or can be obtained for the Trustees to make decisions on the future of the assets including disposals.

4.7 Charity Finances

Formal accounts are required to be prepared for the Charity Commission returns where appropriate. Income is received from the Community Centre. All but is far exceeded by the general maintenance obligations for the parkland where all duties are undertaken by BCC Parks Service.

5. Evaluation of alternative option:

This report seeks approval only to make applications to gain appropriate powers for disposal in order that once a decision on the form of disposal is made it can be properly effected. Disposal in this instance includes options for the freehold disposal by sale, the grant of leases and the transfer of management to other bodies. Any such decision will be subject to a further report.

To do nothing is not an appropriate option as the building will remain at risk.

6. Reasons for Decision(s):

- 6.1 To better safeguard the Trust's assets overall, converting property liabilities to monetary assets and bringing vacant buildings back into beneficial use. The disposal will remove a building at risk of vandalism, falling into disrepair, or otherwise becoming a liability to the Trust.

Signatures:

Chief Officer(s):

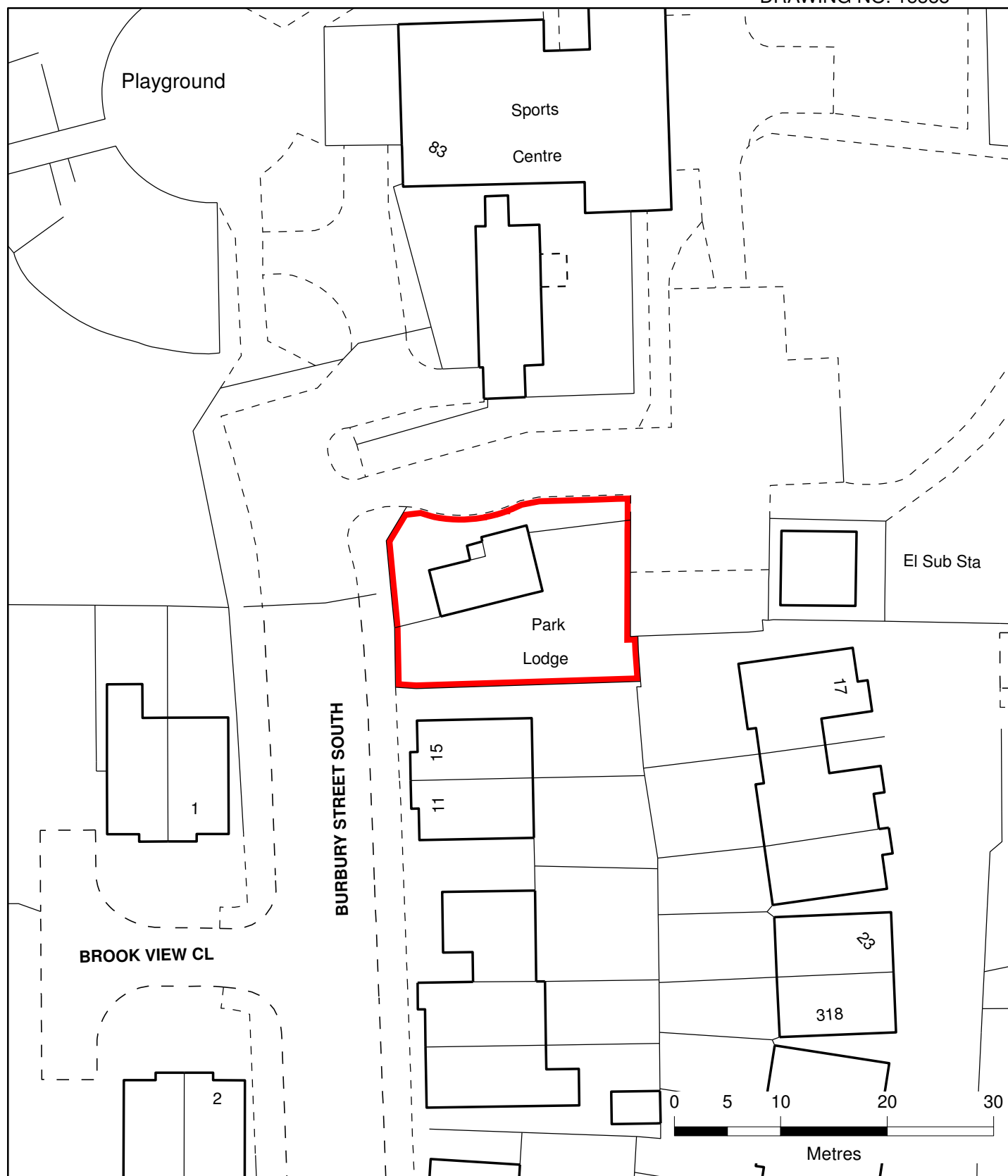
Dated:

List of Background Documents used to compile this Report:

1. Scheme of Powers from the Charity Commission dated 30 June 1999

List of Appendices accompanying this Report (if any):

1. Plan of the boundaries of land included in a disposal.



AREA EDGED RED

381

SQ. METRES APPROX.

456

SQ. YARDS APPROX.



**Burbury Park Lodge
Burbury Street South
Lozells**



Page 25 of 34

O.S.Ref SP0688NW

Peter Jones BSc, FRICS
Director of Property
Birmingham Property Services
PO Box 16255
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09/09/2016

BIRMINGHAM CITY COUNCIL – “COUNCIL AS TRUSTEE”

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	
Report of:	DIRECTOR OF PROPERTY	
Date of Decision:	21st September 2016	
SUBJECT:	SURRENDER AND RENEWAL OF LEASE OF PLAYING FIELD FOR HOWARD PRIMARY SCHOOL (THE ELFORD ESTATE CHARITY – REG. NO.1000692)	
Wards affected:	OUTSIDE OF THE BIRMINGHAM CITY BOUNDARIES	

1. Purpose of report:

- 1.1 To consider the request of the Small Schools Multi Academy Trust operating the Howard Primary School for the grant of a longer lease of the playing field land, being part of the Elford Estate held in trust.

2. Decision(s) recommended:

That Committee:

- 2.1 approves the proposal to accept the surrender of the existing lease and grant a new lease of up to 125 years.
- 2.2 approves the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust.
- 2.3 authorises the recommendations of the Trusts and Charities Committee to be advanced to a future meeting of the Council as Trustee for approval.
- 2.4 authorises any further approval necessary is sought of the Charity Commission or other party or body as appropriate and to agree to make any applications necessary for appropriate powers of disposal.
- 2.5 authorises the City Solicitor to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation.
- 2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

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3. Consultation

- 3.1 No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the various Charities Acts. The Elford Estate is outside of the City boundaries and falls within the parishes of Elford and Whittington & Fisherwick and the secretaries of the Parish Councils are informed of works which affect the public areas of the estate.

4. Compliance Issues:

- 4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The objects/purposes of the Council's charitable trusts all have a commonality and principally are held for the benefit of the citizens of Birmingham. Actions proposed are required to be in the best interests of the trust and are intended to preserve the trust estate for the future while consistent with the Council's Policies, Plans and Strategies.

- 4.2 Financial Implications

The property is already leased long term to the school. There will be no direct cost in proceeding with the proposed new lease as the tenant will pay all Trust landlord's legal and surveyor's costs. The negotiations may secure a small rise in rent paid and any increased rental income will be of general benefit to the Trust.

- 4.3 Legal Implications

Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees in making decisions must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Trustees have a duty to preserve the assets of the trust. Decisions made by the charity must be expedient in the interests of the charity at all times. The disposal of trust assets is an exceptional event and must be in line with appropriate professional advice. All valuation advice conforms to the requirements in Part 7 Charities Act 2011 for the disposition of trust land. The grant of a long lease is a disposal for these purposes.

The City Council is Sole Corporate Trustee of a number of charitable trusts and has delegated day to day management decisions in respect of these trusts to the Trusts and Charities Committee with decisions on other matters being approved at meetings of the Council as Trustee. Proposals for the management of land in trust or of services thereon require robust procedures to safeguard the Trust and the public using the parkland and buildings to comply with charity law. Charitable activity is further regulated by the Charity Commission.

- 4.4 Public Sector Equality Duty (see separate guidance note)

N/A. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions. However, no decision is made until the 'Council as Trustee' has it is determined it is expedient in the interests of the charity to grant a new lease.

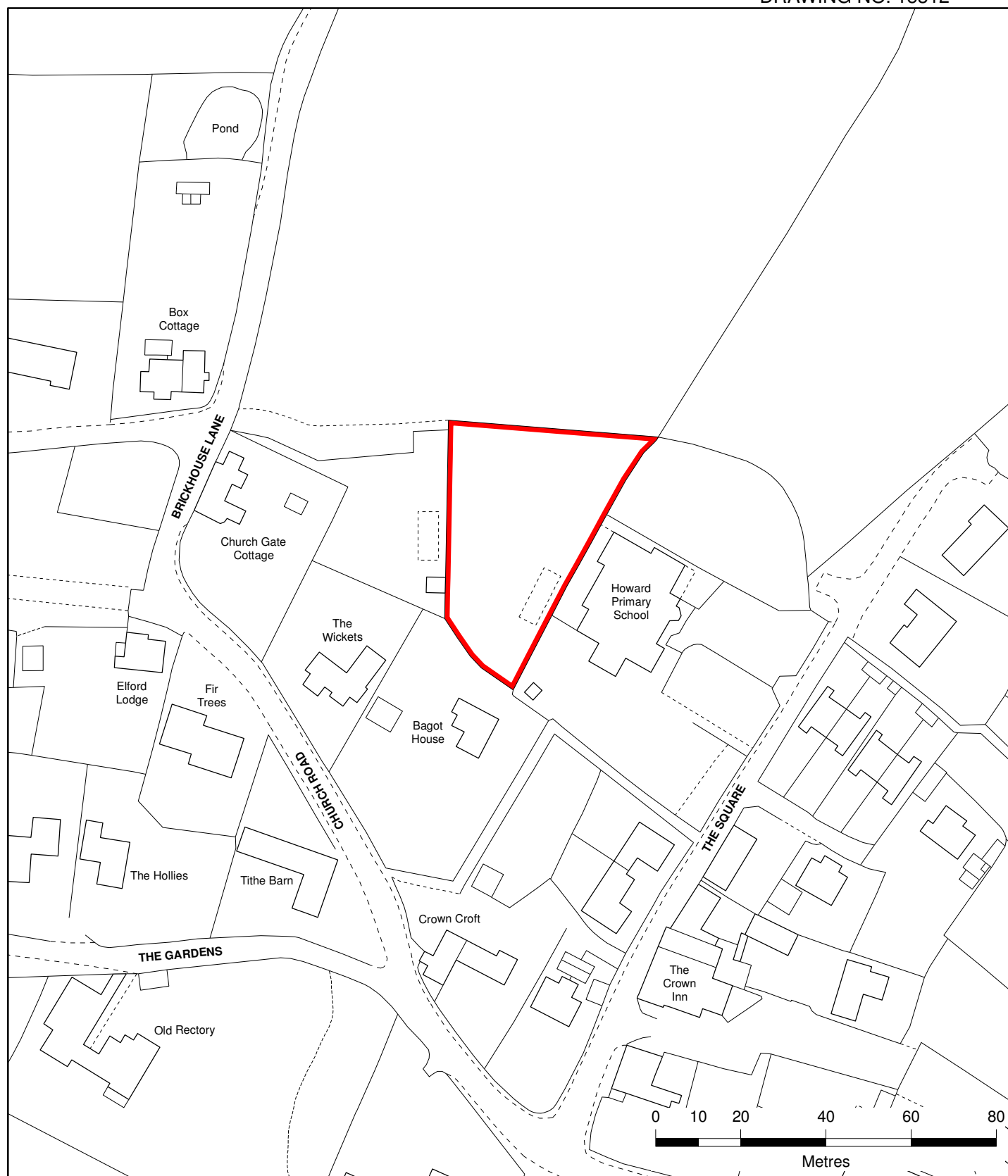
5. Relevant background/chronology of key events:

- 5.1 The Elford Estate Charity is formed from a single gift to Birmingham from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692 registered 25 October 1990. The Governing document is a Scheme dated 14th May 1990 which empowers the trust to make disposals of land and property by sale or by lease without further consent from the Charity Commission.
- 5.2 The Howard Primary School uses 0.187 hectares (0.396 acres) of land on the Elford Estate adjoining the school as a small playing field for the schools use only. The lease granted to South Staffordshire County Council for a period of 38 years from 25th December 1993 with a rental income of £225 per year was assigned to The Small Schools Multi Academy Trust on 1st June 2015. The Academy seeks a new long lease to match their interest in the school buildings (not on trust land) and preferably for 125 years in line with the usual model for the grant of leases to Academies generally.
- 5.3 In considering the request for a long lease due consideration must be given to the future management of the estate as a whole. The land for the school playing field has no independent access and would be difficult to use for any other purpose at present and therefore the grant of a long lease appears not to be detrimental to the Estate. Few long leases have been granted at Elford but it is noted that the school playing field directly adjoins land leased to Elford Parish Council for the use of the local Cricket Club which is on a 99 year lease expiring 14th May 2089.
- 5.4 In negotiating any new lease it will be appropriate to reconsider other terms including rent. The lease plan will remain as existing, see appendix 1.
- 5.5 **Aims and Objectives of the Charity**
Each park is held as a separate trust and decisions need to be in the best interests of that trust. The objects of the Elford Estate Charity are 'the promotion of the healthy recreation of the inhabitants of the City of Birmingham' and 'the preservation of the rural nature of the estate'. The continuation of the playing field lease supports these objects.
- 5.6 **Trustee Powers**
The charity's constitution is set out within the executed Trust Deed, principally the acquisition deeds or as amended by a Scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers also exist for the Trustees to make decisions on the future of the assets including disposal in the Trusts of Land and Appointment of Trustees Act 1996.
- 5.7 **Charity Finances**
Formal accounts are required to be prepared for the Charity Commission returns where appropriate. The Trust has a strong revenue stream principally from the letting of the main land holding comprised in Home Farm plus other smaller lettings.

6.	Evaluation of alternative option(s):
6.1	Do nothing. The lease will continue uninterrupted until 2032 and therefore there is no requirement for the Trust to extend the lease at this stage if it chooses not to.
6.2	Grant a lesser term than requested but if so there would seem to be little benefit to either party to do so prior to the natural renewal point in 2032.
6.3	As has been noted, the school playing field directly adjoins land leased to Elford Parish Council for the use of the local Cricket Club. This was granted for 99 years expiring 14 th May 2089. It may then be most appropriate that the grant of any new lease to the Academy for the school playing field be limited to matching that expiry date.
7.	Reasons for Decision(s):
7.1	To secure legitimate occupation of land and enhance the Trusts support of the local community while also ensuring on-going compliance with and the objects of the Charity for the future.

Signatures	Date
Chairman of the Trusts & Charities Committee
Chief Officer Director of Property

List of Background Documents used to compile this Report:	
1. Elford Charity Commission Scheme dated 14 May 1990.	
2. Existing lease dated 1 st July 1997	
List of Appendices accompanying this Report (if any):	
1. Lease Plan.	



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Howard Primary School Playing Field
The Square
Elford



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Page 31 of 34

O.S.Ref SK1810NE

TRUSTS AND CHARITIES COMMITTEE

21 SEPTEMBER 2016

SCHEDULE OF OUTSTANDING MINUTES

<u>Date/ Minute No</u>	<u>Subject Matter/Response</u>	<u>Comment</u>
571 Nigel Oliver/Sanjeev Bhopal	<u>Surrender and Renewal of Lease up to Final Stage –</u> NB: No authority to prepare or seal documents.	
810 (referring to 804) Nigel Oliver	<u>Car Parking Charges on Trust Land –</u> Awaiting decision from Parks.	
813 Sanjeev Bhopal	<u>Report on legal position/impact of Academy status on Cropwood Trust</u>	

