

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Assistant Director – Skills and Employability
Date of Decision:	13th November 2019
SUBJECT:	BILBERRY HILL CENTRE – POWERS FOR DISPOSAL
Wards affected:	Out of City

1. Purpose of report:

To seek approval to obtain appropriate management powers for the land and premises known as the Bilberry Hill Centre, held in trust, including a power of disposal

2. Decisions recommended:

That the Committee

- 2.1 notes the premises formally leased to the Birmingham Federation Clubs for Young People is considered to be held in trust but are now vacant, the Federation having been recently placed in administration.
- 2.2 authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and, if appropriate, an Order to permit a disposal to a 'connected person' and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval.
- 2.3 delegates to the Assistant Director of Property authority to secure appropriate valuation and marketing advice for the disposal of the property in line with statutory requirements of the Charities Act 2011 and to negotiate the terms of any disposal subject to the terms and conditions of any disposal having been first considered by the Committee
- 2.4 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above recommendations

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3. Compliance:

3.1 Consultations:

Further consultation regarding this report is not required nor envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them. The premises are 'out of the City boundaries so there are no direct Ward Members.

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 with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards.

The Bilberry Hill Centre is held freehold. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal may not assist in this instance. Disposal may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties. Lettings to connected persons including Birmingham City Council would also be subject to a specific application for approval from the Charity Commission.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent. The trustees are responsible for ensuring appropriate cost controls are in place. There are no current capital or revenue resources. If a disposal is supported this will secure either a revenue stream from a letting or a capital receipt from a disposal of the freehold interest. Any transactions will be conducted in line with statutory processes set out in the Charities Act 2011 and receipts ring-fenced and invested appropriately for the Charity. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer costs for which are to be determined. All future running costs for the premises will continue to be covered by the incoming tenant/purchaser to be selected to avoid any burden on the trust.

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

Not applicable. 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.

4. Relevant background/chronology of key events:

- 4.1 The land and premises forming the Bilberry Hill Centre located at Rose Hill adjoining the Lickey Hills Country Park was acquired in three parts two of which are considered to be held in trust. The larger part of the trust was gifted to the Council on 4th September 1903 by Barrow Cadbury. A smaller area of land adjoining was gifted to the Council on 17th December 1904 by Barrow Cadbury and Ernest J Bigwood. The third part is not held in trust being a monetary purchase by the Council from Earl of Plymouth on 2nd October 1914. It is a much larger area of land forming part of the Country Park a small portion of which the Federation expanded onto in the 1960's. The trust land is not a registered charity.
- 4.2 On acquisition the premises originally included the smaller properties known as the Crown Temperance Hotel and Bilberry Cottage but by 1916 these were replaced and expanded into the Bilberry Hill Tea Rooms and the separate Coach House. Use of the Tea Rooms and restaurant continued until the 1960's but the premises have been leased to the Birmingham Federation Clubs for Young People (Charity Number 522850) since 1970 as a residential activity centre. The premises have nominally been in the management of the Youth Service who grant aided the rent but on the Federation being placed in Administration and the keys returned to the Council the premises have been declared surplus to their requirements. The premises are not in good condition.
- 4.3 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for change and currently there is no ability to provide an alternative use for the premises. 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 that the premises are relet or disposed of. To progress any disposal either by freehold disposal or letting it is necessary for the trustees to hold the appropriate powers.
- 4.4 Other applications may need to be made to remove or amend the restrictive covenant limiting the premises to recreational uses only.
- 4.5 **Aims and Objectives of the Trust**
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust as set out on this acquisition is to operate the premises in accordance with the provisions contained in the Birmingham Corporation (Consolidation) Act 1883 with reference to Parks.
- 4.6 **Trustee Powers**
A trust's constitution is set out within the executed Trust Deed for each property 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 **Trust Finances**
The sole asset of the trust is the land and properties. The trust has no revenue source or capital investments.
- 4.8 **Evaluation of alternative option:**
This report seeks approval to make applications to amend the restrictive covenant and gain appropriate powers for future management or disposal of the property. To do nothing is not an appropriate option as the occupation of land requires to be properly regularised and this is most safely achieved by the grant of an appropriate lease.

6. Reasons for Decision(s):

6.1 To better safeguard the Trust's assets overall, remove potential burdens and seek to preserve the buildings.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Acquisitions dated 4th September 1903 and 17th December 1904

List of Appendices accompanying this Report (if any):

1. None.

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Integrated Service Head – Libraries
Date of Decision:	22 January 2020
SUBJECT:	BARTLEY GREEN LIBRARY – GRANT OF LEASE
Wards affected:	Bartley Green

1. Purpose of report:

- 1.1 To seek approval to obtain revised management powers for Bartley Green Library, held in trust, including a power of disposal which will enable the grant of leases, including a lease to the voluntary group proposing to operate the Library.

2. Decisions recommended:

That the Committee authorises

- 2.1 that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal including the disposal by way of a lease for up to 30 years.
- 2.2 from an early date to be agreed, the grant of a tenancy of up to three years to the 'Bartley Green Library Hub', a local community organisation, who will assist in the operation of the Library
- 2.3 that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval
- 2.4 delegates to the Assistant Director of Property authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the property and negotiate the terms of any disposal
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease 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.

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3. Compliance:

3.1 Consultations:

Officers in the Library Service have undertaken all consultation and included the continuation of service provision at this location in their Service review report entitled 'Community Library Service – consultation on tiered delivery model' dated 18 October 2016 and subsequently reported to Cabinet meeting dated 14 February 2017. This is designated a Tier 3: Supported Community Library – these would be run by a community provision supported by the Library Service or via a transferred facility.

Ward Members have been fully involved in the proposal to manage the library via a community volunteer group and support the proposal.

Further consultation regarding this report is not envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them.

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 with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards.

Bartley Green Library is held freehold. The land was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance. Disposal in this instance may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent. The trustees are responsible for ensuring appropriate cost controls are in place. A lease is a disposal and any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue ring-fenced and invested appropriately for the Charity. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer. All future running costs for the premises will continue to be covered by the incoming tenant to be selected removing any potential burden from the Trust.

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

Not applicable. 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.

4. Relevant background/chronology of key events:

- 4.1 The freehold interest of the land for Bartley Green Library was gifted to the Kings Norton and Northfield Urban District Council by Henry Adkins on 10th August 1904 and is recorded as a gift and is land held in trust. This is not a registered charity.
- 4.2 The transfer was subject to the requirement that within twelve months the Council should erect on the land a 'Reading Room' for the use of the residents of Bartley Green. The 'Reading Room' was opened in 1905 and known as Bartley Green Free Library. The Urban District Council was incorporated into the County Borough of Birmingham now Birmingham City Council in 1911.
- 4.3 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for change and currently there is no ability to provide an alternative use or users of the premises. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so also requires that all occupations be properly documented.
- 4.4 On the 19th June 1992 a Scheme was granted by the Charity Commission to enable the disposal of a portion of the land. No other powers were granted by that Scheme.
- 4.5 The report seeks approval to seek a scheme enabling leases of up to 30 years to be granted which will enable future flexibility particularly should larger bids for external grant monies need to be considered. At this stage the voluntary group initially seek only a three year lease.

4.6 Aims and Objectives of the Trust

Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust are simply to 'use of the premises as a reading room / library. The occupation by the proposed group will enhance the opening hours and service provision at the Library.

4.7 Trustee Powers

A trust's constitution is set out within the executed Trust Deed for each property 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 except where an asset is regarded as 'specie' land.

4.8 Trust Finances

The sole asset of the trust is the library building and grounds. The trust has no revenue source or capital investments. The property to be leased is currently managed and maintained by Birmingham City Council Library Service but who are now seeking to enable to day to day operation of the library to be undertaken through a local voluntary community group and the grant of a lease or operational agreement will enable the group to apply for grants for the improvement of the property and enhance service delivery.

5. Evaluation of alternative option:

This report seeks approval to make applications to gain appropriate powers for improved future management and to enable a disposal of the property. The establishment of a local community group to assist with the library operations positively benefits the continuation of a library at this location and assists the objects of this trust. To do nothing is not an appropriate option as the future occupation of the asset requires to be properly regularised and this is most safely achieved by the grant of an appropriate lease.

6. Reasons for Decision(s):

- 6.1 To better safeguard the provision of services to the local community which services assist the trust to meet its objects around recreational and educational use of the asset.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 10th August 1904

List of Appendices accompanying this Report (if any):

1. None.

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Integrated Service Head - Libraries
Date of Decision:	22 January 2020
SUBJECT:	STIRCHLEY LIBRARY – GRANT OF LEASE
Wards affected:	Stirchley

1. Purpose of report:

- 1.1 To seek approval to obtain revised management powers for Stirchley Library, held in trust, including a power of disposal which will enable the grant of leases, including a lease of first floor space to the voluntary group Stirchley Art Rooms CIC.

2. Decisions recommended:

That the Committee authorises

- 2.1 that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal including the disposal by way of a lease for up to 30 years.
- 2.2 from an early date to be agreed, the grant of a tenancy of up to three years to the Stirchley Art Room CIC, a local community organisation, who will assist in the operation of the Library
- 2.3 that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval
- 2.4 delegates to the Assistant Director of Property authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the property and negotiate the terms of any disposal
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease 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.

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3. Compliance:

3.1 Consultations:

Officers in the Library Service have undertaken all consultation and included the continuation of service provision at this location in their Service review report entitled 'Community Library Service – consultation on tiered delivery model' dated 18 October 2016 and subsequently reported to Cabinet meeting dated 14 February 2017.

Ward Members have been fully involved in the proposal to manage the library via a community volunteer group and support the proposal.

The Friends of Stirchley Library are supportive of the proposal.

Further consultation regarding this report is not envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them.

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 with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards.

Stirchley Library is held freehold. The land was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance. Disposal in this instance may include freehold sale subject to further approvals from the Committee and also the grant of leases or tenancies or the management of the holdings by other parties.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent. The trustees are responsible for ensuring appropriate cost controls are in place. A lease is a disposal and any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue ring-fenced and invested appropriately for the Charity. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer. All future running costs for the premises will continue to be covered by the incoming tenant to be selected removing any potential burden from the Trust.

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

Not applicable. 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.

4. Relevant background/chronology of key events:

- 4.1 The freehold interest of the land for Stirchley Library was gifted to the Kings Norton and Northfield Urban District Council by Cadbury Brothers Limited on 18th September 1904 and is recorded as a gift and is land held in trust. It is not a registered charity.
- 4.2 The Library was constructed by the Council with funding provided by the Carnegie Foundation and although detached is a contiguous part of the complex of community buildings including the former Stirchley Baths now the Stirchley Hub Community Centre. The library was fully opened in 1906 and known as Stirchley Free Library. It was Listed Grade 2 on 20th November 1998. The Urban District Council was incorporated into the County Borough of Birmingham now Birmingham City Council in 1911.
- 4.3 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for change and currently there is no ability to provide an alternative use or users of the premises. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so also requires that all occupations be properly documented.
- 4.4 Stirchley Art Room CIC company no. 11963099 was incorporated on 25th April 2019 and already provided volunteers to assist the operation of the library. They seek a lease of space on the first floor which they will fully refurbish at their own cost and with external grants.
- 4.5 The report seeks approval to seek a scheme enabling leases of up to 30 years to be granted which will enable future flexibility particularly should larger bids for external grant monies need to be considered. At this stage, however, the CIC initially seek only a three year lease.
- 4.6 **Aims and Objectives of the Trust**
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust are simply to 'use of the premises as a reading room / library.
- 4.7 **Trustee Powers**
A trust's constitution is set out within the executed Trust Deed for each property 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 except where an asset is regarded as 'specie' land.
- 4.8 **Trust Finances**
The sole asset of the trust is the library building and grounds. The trust has no revenue source or capital investments. The property to be leased is currently managed and maintained by Birmingham City Council Library Service but who are now seeking to enable to day to day operation of the library to be undertaken through a local voluntary community group and the grant of a lease or operational agreement will enable the group to apply for grants for the improvement of the property and enhance service delivery.

5. Evaluation of alternative option:

This report seeks approval to make applications to gain appropriate powers for improved future management and to enable disposal of the property. To do nothing is not an appropriate option as the future occupation of the asset requires to be properly regularised and this is most safely achieved by the grant of an appropriate lease.

6. Reasons for Decision(s):

6.1 To better safeguard the provision of services to the local community which services assist the trust to meet its objects around recreational and educational use of the asset.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 19th September 1904

List of Appendices accompanying this Report (if any):

1. None.

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Assistant Director - Neighbourhoods
Date of Decision:	22 January 2020
SUBJECT:	CALTHORPE PARK – LEASE OF PLAY CENTRE FOR GENERAL COMMUNITY PURPOSES
Wards affected:	Balsall Heath West

1. Purpose of report:

- 1.1 To seek approval to obtain revised management powers for Calthorpe Park, held in trust, including a power of disposal which will enable the grant of leases on Trust assets.

2. Decisions recommended:

That the Committee

- 2.1 notes a report delivered to Committee on 13th November 2019 seeking to make applications to obtain necessary new powers to grant leases on the trust assets incorrectly referred to 'The Active Wellbeing Service' as managing the Calthorpe Park Play Centre premises and should have referenced the Birmingham City Council Health and Wellbeing Service as managers and accordingly Committee are asked to consider a revised report to seek these powers which if granted will enable the opportunity to lease the Play Centre for continuing community purposes to be advertised and an appropriate local community group selected as tenants and work towards securing external funding for its further enhancement. This will maintain and improve community service provision in the area.
- 2.2 authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and if appropriate an Order to permit a disposal to a 'connected person'
- 2.3 authorises the disposal by way of a lease for up to 30 years from an early date to be agreed, of the land currently allocated to the Service being granted to a suitable community organisation and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval
- 2.4 delegates to the Assistant Director of Property authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of property and negotiate the terms of any disposal
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease 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.

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3. Compliance:

3.1 Consultations:

Officers in the Health and Wellbeing Service have undertaken local consultation and recognise that there is a need for continuing community provision in the area and appropriate local community groups that would be interested in leasing the premises. Ward Members have been consulted and have no direct issues on future marketing. Street Services & Parks manage Calthorpe Park generally and the changing rooms adjoining the Play Centre and are aware that this report seeks no changes to that arrangement.

Further consultation regarding this report is not envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them, but further consultation is anticipated on advertisement.

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 with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards.

The release of the property restricted to community uses will still safeguard the provision of services to the local community which services assist the trust to meet its objects around recreational use of the Park.

Calthorpe Park is held freehold. The land was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance. Disposal in this instance may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties. Lettings to connected persons including Birmingham City Council and/or the Active Wellbeing Service would also be subject to a specific application for approval from the Charity Commission.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent. The trustees are responsible for ensuring appropriate cost controls are in place. A lease is a disposal and any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue ring-fenced and invested appropriately for the Charity. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer costs for which will be reclaimed from the Health and Wellbeing Service. All future running costs for the premises will continue to be covered by the incoming tenant to be selected removing any potential burden from the Trust.

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

Not applicable. 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.

4. Relevant background/chronology of key events:

- 4.1 Calthorpe Park was the second public park in Birmingham opened 1st June 1857 on land owned by Lord Calthorpe. Initially held only by 'licence', the freehold interest was transferred to the Birmingham Corporation subject to the land being made available as a recreation ground. This transfer is recorded as a gift and is treated as land held in trust. This is not a registered charity.
- 4.2 In 1900 land a land exchange regularised the shape of the park while enabling the adjoining housing development or the expansion of Balsall Heath. The land then accepted into the Park is treated as held in trust. The Calthorpe Park Play Centre is located on this land. The Park and Play Centre continues to be very well used.
- 4.3 In 1893 and 1899 the parkland was extended by further formal acquisition, but these are not gifts nor have any charitable status.
- 4.4 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for change and currently there is no ability to provide an alternative use for the premises. 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 that all occupations be properly documented. It is overdue that the activities at the Play Centre are formally recognised and documented.
- 4.5 Other applications may need to be made to remove or amend the restrictive covenant limiting the premises to recreational uses only.
- 4.6 **Aims and Objectives of the Trust**
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust are simply to 'use of the premises as a public park and the presence and activities of the Play Centre enhance this.
- 4.7 **Trustee Powers**
A trust's constitution is set out within the executed Trust Deed for each property 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.
- 4.8 **Trust Finances**
The sole asset of the trust is the park property. The trust has no revenue source or capital investments. The property to be leased is managed and maintained by Birmingham City Council Health and Wellbeing Service and is in good condition.

5. Evaluation of alternative option:

This report seeks approval to make applications to gain appropriate powers for future management or disposal of the property. To do nothing is not an appropriate option as the occupation of land requires to be properly regularised and this is most safely achieved by the grant of an appropriate lease. The Health and Wellbeing Service confirm they will continue to manage the premises until leases to an appropriate group are fully resolved.

6. Reasons for Decision(s):

- 6.1 To better safeguard the Trust's assets overall, retaining public services leading to the healthful recreation of the citizens of Birmingham within this public park.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 26th February 1900 and 1st June 1857

List of Appendices accompanying this Report (if any):

1. None.

BIRMINGHAM CITY COUNCIL- "COUNCIL AS TRUSTEE"

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	DIRECTOR OF PROPERTY
Date of Decision:	20 March 2019
SUBJECT:	SAREHOLE MILL RECREATION GROUND - LEASE OF SAREHOLE MILL TO BIRMINGHAM MUSEUM TRUST
Wards affected:	SELLY OAK

1. Purpose of report:
1.1 To approve the decision by the Chairman of the Trusts and Charities Committee to allow the completion of an Agreement for Lease and the grant of a lease for 25 years of the Mill premises to Birmingham Museums Trust.

2. Decision(s) recommended:
2.1 To note the action of the Chairman, in consultation with officers, in agreeing to the terms for the completion of an Agreement for Lease and subsequently the grant of a lease for 25 years of the Mill premises to Birmingham Museums Trust within the next 12 months and to delegating to the Director of Property authority to undertake all appropriate actions to negotiate the terms of the agreement and lease and for the City Solicitor to prepare, negotiate, execute, seal and complete all necessary documentation to give effect to the above decisions and that the recommendation be referred to a future meeting of Council as Trustee..

Contact Officer:	Nigel Oliver
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E-mail address:	nigel_g_oliver@birmingham.gov.uk

Signatures:
Chief Officer(s):
Dated:.....

List of Appendices accompanying this Report (if any):
1. Chair's Action report dated 26 th February 2019

3. Relevant background/chronology of key events:
3.1 None additional to the attached report.

BIRMINGHAM CITY COUNCIL- TRUSTS AND CHARITIES COMMITTEE
CHAIRS ACTION - SAREHOLE MILL RECREATION GROUND - LEASE OF SAREHOLE
MILL TO BIRMINGHAM MUSEUM TRUST

Wards affected:	Hall Green North
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- 1.1 Sarehole Mill Museum is held in trust as part of registered charity no. 254995 known as "Sarehole Mill Recreation Ground (Foster for Botanical Gardens etc.)"
- 1.2 Birmingham City Council approved at their Cabinet meeting on 22 March 2016 the renewal of the wider contract for Birmingham Museums Trust to operate the Museums and Heritage Service including provision of services at Sarehole Mill Museum and approved that the occupational leases now be granted for 25 years. On 2nd March 2016 to assist the above decision and to ensure the all due diligence was undertaken in regards to trust properties the Trusts & Charities Committee approved the renewal of the lease of Sarehole Mill Museum to Birmingham Museums Trust on the same terms. Birmingham City Council approved a further report on the Birmingham Museums Trust contract and lease at its Cabinet meeting of 31 July 2018.
- 1.3 For operational reasons affecting other sites the leases are only now able to be completed. However for the lease at Sarehole Mill Recreation Ground requires additional approvals from the Charity Commission before it can be completed. Birmingham Museums Trust has requested that in lieu of the lease to evidence their occupation an Agreement for Lease be completed, such agreement to include a backstop date of 31st March 2020 for completion of the lease already approved in earlier reports. There is a necessity for the occupations of Birmingham Museums Trust to be evidenced by contract to enable BMT to receive all its funding.
- 1.4 Birmingham Museums Trust have also requested an additional area of the park be included in the lease to assist in creating a circular route around the Mill improving the visitor offer but also to properly separate the mill pond from the general park and reduce safety concerns but this will be subject to a further approval at Committee and at Council as trustee.

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Decision - That the Chairman

- 2.1 Agrees that the grant of the lease for up to a 25 year term having already been approved the Agreement for Lease to Birmingham Museums Trust can be entered into to provide appropriate security for the occupation of Birmingham Museums Trust and that a report be brought to the next available Committee.
- 2.2 That the negotiation of the terms for the Agreement for Lease be delegated to the Assistant Director of Property

- 2.3. To seek any further approval necessary of the Charity Commission or other bodies as appropriate and to agree to make any applications necessary for appropriate powers of disposal.
- 2.4. 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 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.
- 2.5. Authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation for the operation of the land and buildings at Sarehole Mill Recreation Ground by Birmingham Museums Trust, including this lease, to give effect to the above decisions.

Signature of the relevant Chairman in approving the basis for the occupation of Sarehole Mill Museum and additional land at Sarehole Mill Recreation Ground by Birmingham Museums Trust:-

Chairman of the Trusts and Charities Committee:
Councillor Diane Donaldson

Diane Donaldson

Date:

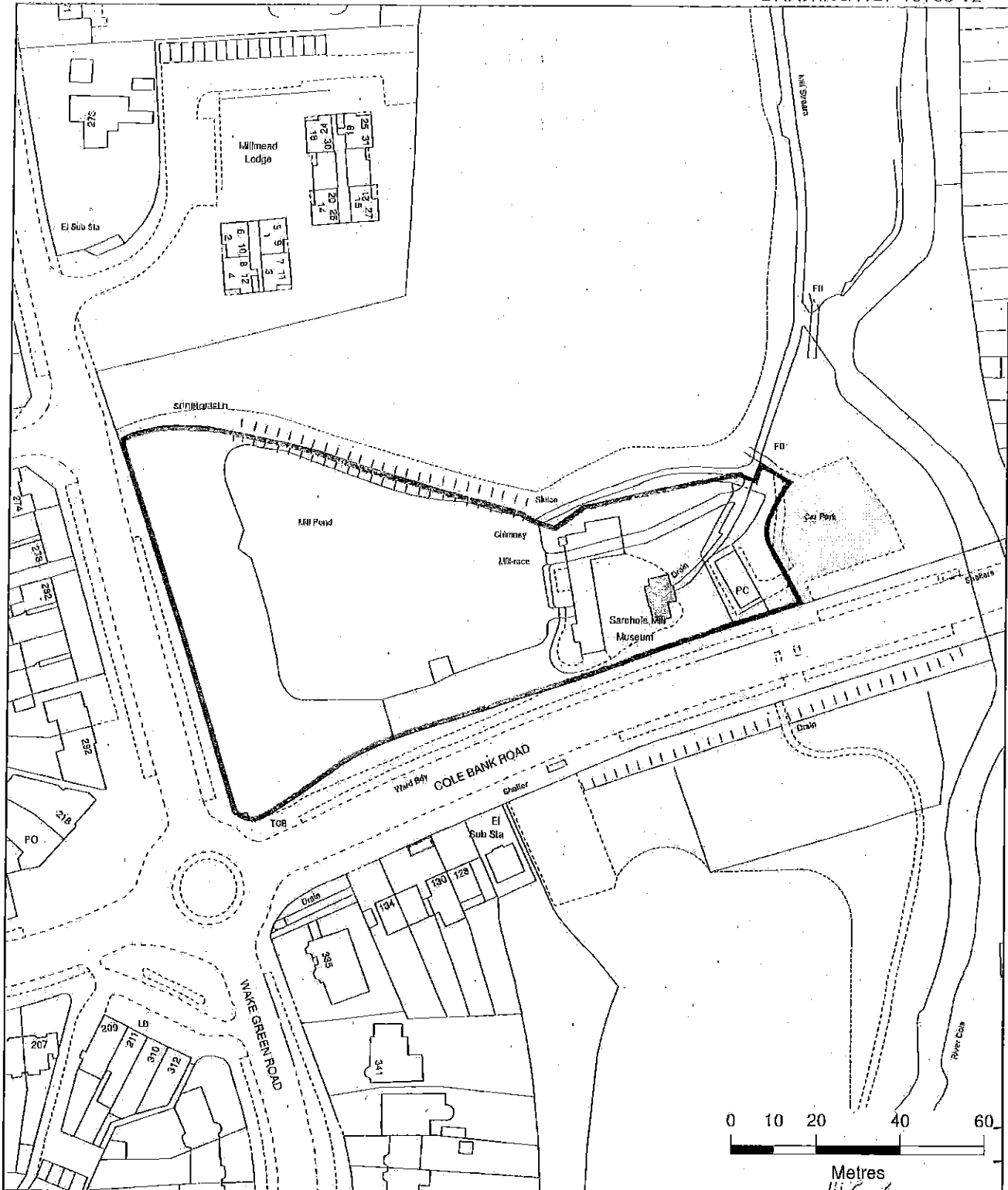
26/2/2019

Chief Officer:

Date

Appendix - Plan

DRAWING NO. 10703 V2



AREA EDGED RED 0.8 HECTARES APPROX. 1.99 ACRES APPROX.



Birmingham
City Council

Waheed Nazir
Corporate Director of Economy
1 Lancaster Circus
PO Box 14439
Birmingham, B2 2JE

Sarehole Mill Museum
Cole Bank Road



SCALE
1:1,250

DRAWN
Bharat Patel

DATE
25/02/2019

O.S.Ref SP0981NE

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