

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.

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

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.	