

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

**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 13<sup>th</sup> 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 26<sup>th</sup> February 1900 and 1st June 1857

**List of Appendices accompanying this Report (if any):**

1. None.