

Birmingham City Council

City Council

11 July 2023



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

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

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

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

1 Executive Summary

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

2 Recommendations

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

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

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

3 Background

Governance arrangements

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

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

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

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

4 Public Consultation and Equality Impact

- 4.1 Public consultation about the proposed transfer of Highbury Trust assets, as set out in this report, was undertaken via the Council's BeHeard platform between February 2022 and April 2022. The responses received were supportive of the proposal subject to sufficient safeguards being in place to regulate the new occupier of the site. If a decision to dispose is taken by the Council as Trustee then the Charity Commission will mandate that a further comprehensive public consultation exercise to be undertaken before they will consider granting a Scheme or Order in order for the proposal disposals to take place. At the same time a Full Equality Analysis will be undertaken to ensure that the requirements of the Equality Act 2010 are met.
- 4.2 Following discussion of this matter at Full Council on 13 June 2023, Officers have responded in writing to the specific points raised at that meeting and further Officer consultation has been offered and undertaken with the Leader of the Council, the relevant Cabinet Member, local Ward Councillors and Members who have requested further information to explain how this report will affect the future charitable operation of Highbury and the potential impact on Council activities currently being undertaken at the site.

5 Matters to be Determined

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

6 Appendices

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