

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>	
<b>Report of:</b>	<b>Director of Property</b>	
<b>Date of Decision:</b>	<b>23<sup>rd</sup> September 2015</b>	
<b>SUBJECT:</b>	<b>FUTURE OF RESIDENTIAL LODGES IN PARKS HELD IN TRUST</b>	
<b>Key Decision: No</b>	<b>Relevant Forward Plan Ref:</b>	
<b>If not in the Forward Plan: (please "X" box)</b>	<b>Chief Executive approved</b>	<input type="checkbox"/>
	<b>O&amp;S Chairman approved</b>	<input type="checkbox"/>
<b>Relevant Cabinet Member(s) or Relevant Executive Member:</b>	<b>N/A</b>	
<b>Relevant O&amp;S Chairman:</b>	<b>N/A</b>	
<b>Wards affected:</b>	<b>ALL</b>	

**1. Purpose of report:**

- 1.1 To provide an update to Members of the Committee, following the Reports of 5<sup>th</sup> November 2014 and 4<sup>th</sup> March 2015 in which it considered options for the future of the remaining residential lodges in parks held in Trust.

**2. Decision(s) recommended:**

That Committee

- 2.1 notes the review of trust assets has been completed and approves the proposed actions determining the future of each lodge.
- 2.2 approves the transfer of the management of the remaining lodges from Parks Service to the Housing Department of Birmingham City Council, but also the establishment of the appropriate mechanism to ensure that the disposal of the freehold interest of any lodge can be undertaken as and when they become vacant and recommends that the report be advanced to the next meeting of Full Council as Trustee for a decision.
- 2.3 That the Director of Property be authorised to complete negotiations for the proposed disposal either by auction or by private treaty in compliance with Part 7, Charities Act 2011.
- 2.4 That the Director of Legal Services and Democratic Services be authorised to make all investigations and applications required and negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.
- 2.5 To note that a further report will be brought to determine the mechanisms for the management of the lodges by the Housing Department of Birmingham City Council.

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**3. Consultation**

Consultation should include those that have an interest in the decisions recommended

3.1 Internal

The Chairman of the Trusts & Charities Committee was consulted on the preparation of this Report, along with officers who support the Committee within Birmingham Property Services, Legal & Democratic Services and Corporate Finance and Audit. Full consultation has also been undertaken with Parks and Housing officers who support the actions proposed.

3.2 External

N/A

**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 Parks and Gardens, all have a commonality, namely for the benefit of the public and principally are to be held as public open space for the citizens of Birmingham. The actions proposed are consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham" but will also ensure the improvement of trust position overall.

4.2 Financial Implications (Will decisions be carried out within existing finance and resources?)

Very few of the trusts effected have any assets except the properties in the report. As there is no revenue or capital accrued to date the trust is not in a fit position to manage properties and should consider alternative measures. The most appropriate measure is to place active tenanted lodges in Housing management, acknowledging they will charge an agreed fee for this and for repairs but also to acknowledge that it is appropriate to resolve that the properties be sold once they become vacant.

4.3 Legal Implications

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 approval of the proposed actions is the most appropriate route to safeguard the trust as landlord but for any disposals will likely require additional powers to be acquired for most of the trusts and this may include applications to the Charity Commission.

None of the trust lodges are now required to be used by Parks employees for the undertaking of duties and therefore are not service tenancies but assured tenancies. Assured tenancies are managed under the Housing Act 1988.

4.4 Public Sector Equality Duty (see separate guidance note)

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 On 5<sup>th</sup> November 2014, a report was approved at Committee seeking approval to place the park lodges in the management of the Housing Department pending a further report being brought to Committee summarising proposed longer term resolutions for the lodges and the powers required to advance them. At the meeting on 4<sup>th</sup> March 2015 the Committee approved a recommendation for the disposal of four vacant trust properties with the understanding further reports would be advanced as they were ready.
- 5.2 Measures to advance the transfer of the actively tenanted lodges to the Housing Department have been progressed but currently management is still with the Parks service. A report is still being advanced by Housing officers but has been delayed while additional advice from Legal Services is considered. That advice clarified some matters for the trust properties but generally substantiated our earlier advice and existing proposals. While matters on the general Parks lodges may need to be reconsidered it is appropriate to move forward a report which determines a route for the future management of trust properties and to ensure all relevant powers are available to deal with the property as is best determined at the time it may become vacant. That should include the power of disposal.
- 5.3 All options have been fully considered and taking into account the age, condition and cost of repair ultimately the report concludes that divesting the Trust of its property responsibilities would be the most appropriate action for each Trust. This will rationalise the portfolio without affecting the primary use of the relevant park as an open space, avoid the continuing dilapidation of the assets and where a disposal takes place secure capital for the Trust. That capital will be ring-fenced to each individual trust and must be used in accordance with the trust's constitution.
- 5.4 The proposed action would be to pass the management of the lodges subject to tenancies to Housing who will be able to review the rents and organise repairs and statutory inspections and then if in due course the property is vacated to sell at auction with an appropriate reserve but if not successful consider other appropriate routes for a disposal, if this continues to be expedient in the interests of the charity.
- 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 Trustees are referred to the guidance contained in the Charity Commission's general guidance on public benefit when reviewing the aim and objectives of the charity and in planning any future activities (S17 Charities Act 2011). The majority of lodges are on parks where the object of the charity is simply to maintain the land as parks open to the public. This therefore makes it designated for a specific purpose, and would therefore be subject to Charity Commission approval before any disposal could take place.
- 5.7 **Trustee Powers**  
The charity's constitution is set out within the executed Trust Deed for each park principally the acquisition deeds unless subsequently amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents. Subject to compliance with Charity law and Part 7 Charities Act 2011.
- 5.8 **Charity Finances**  
Accounts are prepared for the Charity Commission returns where appropriate but there is no income or capital assets in any of the trusts. Where income such as the residential rent is paid it is paid to Parks in lieu of their management and repairing duties. The same will apply if the lodges transfer to Housing management. It is appropriate to consider alternative resolutions for each lodge.

<b>6. Evaluation of alternative option(s):</b>							
6.1	There is no alternative action identified. The trusts do not have sufficient funds to deal with the properties properly and must rely on the mechanism of managing them through the Place Directorate (Housing) and while rents can rise it is not anticipated that they will rise sufficiently to ensure adequate resources are available.						
<b>7. Reasons for Decision(s):</b>							
7.1	To better safeguard the Trust's assets in the short term and to secure capital funds for each trust and demonstrate continuing support for the objects of the Charity.						
<table border="1"> <tr> <td><b>Signatures</b></td> <td><b>Date</b></td> </tr> <tr> <td><b>Chairman of the Trusts &amp; Charities Committee</b></td> <td>.....</td> </tr> <tr> <td><b>Chief Officer Director of Property</b></td> <td>.....</td> </tr> </table>		<b>Signatures</b>	<b>Date</b>	<b>Chairman of the Trusts &amp; Charities Committee</b>	.....	<b>Chief Officer Director of Property</b>	.....
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<b>List of Background Documents used to compile this Report:</b>							
Reports to Committee on the Future of Residential Lodges held in Trust dated 5 <sup>th</sup> November 2014 and 4 <sup>th</sup> March 2015							
<b>List of Appendices accompanying this Report (if any):</b>							
None							