

REPORT OF TRUSTS AND CHARITIES COMMITTEE**A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY
COUNCIL AS TRUSTEE.**

1. PURPOSE/SUMMARY

To seek formal approval from Council as Trustee to the Motions proposed for each of the matters set out below which after consideration at earlier Trust and Charities Committee meetings are recommended to proceed.

2. BACKGROUND

Governance arrangements

The City Council is Sole Corporate Trustee for a number of charitable trusts. Whereas day-to-day management decisions are delegated to the Trusts & Charities Committee only Full Council sitting as “Council as Trustee” can sanction disposals or major changes on trust land, Disposals include but are not limited to, leases granted for more than seven years.

It is a requirement of the Charities Act 2011 that any charitable trust must achieve best value in any disposal of land, although there are some exceptions to this when dealing with other charities.

Each charitable trust is governed by the deed under which it was established, and/or a Charity Commission Scheme where applicable. These documents set out the powers the Trustees have, as well as the objects or purposes for which the charitable trust was created.

Generally, a disposal of charitable land can only occur where the Trustees have either an express power of disposal within the Deed and/or Charity Commission Scheme, or can use an implied power under the Trusts of Land and Appointment of Trustees Act 1996.

In some cases where there is no implied or express power, an application to the Charity Commission for the grant of a scheme of new management powers may be required. Occasionally proposals require the disposal of land from a Trust to the City Council. To affect this will require also an application to the Charity Commission for the grant of Order from the Commission sanctioning the ‘disposal’ to Birmingham City Council as a “connected person”.

In such cases it is also necessary to establish a new ‘trading subsidiary company’ for the Trust, to hold the land in trust and conduct all appropriate future business including the leasehold disposal of part of the trusts holdings. The formation of this does not affect the existing governance arrangements involving Trusts and Charities Committee or Council as Trustee who will remain the decision-making body.

The Commission would only provide an Order to the Council as Trustee, if the Trustee can clearly demonstrate that the decision proposed is in the best interests of the Trust and that it could demonstrate to the Commission that it has managed any potential conflicts of interest by undertaking proper public consultation on the proposal.

3. MATTERS TO BE DETERMINED

A. Grove Park – disposal by long lease of land to Birmingham City Council

The Park was gifted in 1902 by G W Kenrick to be held for the perpetual use thereof by the public for the purposes of recreation and exercise as a public park or as an open space with the provision that this should not preclude the City Council from utilising small areas for other public or charitable purposes. The Trust is registered with the Charity Commission as “The Public Park at Harborne” though known locally as Grove Park.

A care home has existed on the site since the 1960’s though that was demolished in 2001 as the property no longer met the minimum National Care Standards. On the 19th December 2005 Cabinet approved the Full Business Case for the construction of four Care Centres as part of Social Care and Health’s Older Adults modernisation programme replacing the remaining 29 Elderly Person Homes. After consultation, including representatives of the Kenrick Family, at its meeting on 26th July 2006 the then Trusts and Charities Sub-Committee permitted the development of a care centre on the site of the former Grove care home and to be known as the Kenrick Centre. The agreement gave the City Council no formal legal interest in the site, which remained vested with the Trust but provided enough certainty to allow the construction to proceed.

At its meeting of 15th April 2015 the Trust and Charities Committee agreed to recommend that in response to an approach by Birmingham City Council to better use this property for the provision of elderly care that a formal lease be granted and also to permit the subletting of the premises to other care providers proposing that the lease be for 150 years on terms to be agreed but at a peppercorn rent subject to a premium payment assessed at market value in order that the Trust is sufficiently compensated. All receipts will be ring-fenced to the Trust. As this is a letting to Birmingham City Council which is a ‘connected person’ it will be necessary to seek the consent of the Charity Commission and also establish a subsidiary trading company to grant the lease (now established).

The Kenrick Centre has been operational since 2008, full public consultation has taken place and the proposed lease terms being at full market value for the site will ensure the Trust remains compliant with all requirements set out in the Charities Act 2011.

The land is held in trust and formal approval to the grant of the lease and the actions required to effect this is now required.

B. Highbury Trust – grant of lease to Acivico for the occupation of Highbury

‘Highbury’, the main house being a substantial part of the Highbury Trust gifted from the estate of Joseph Chamberlain to the City Council (Registered Charity no. 1039194 since 1994) has been used by Birmingham City Council and managed by Acivico (formerly Civic Catering) for many years without any formal agreement being in place. In order to ensure compliance with the requirements of the Charities Act it is necessary that all such arrangements are properly documented and represent best value for the charity.

At its meeting of 16th April 2014 the Trust and Charities Committee agreed to recommend to Council as Trustee that a formal lease be granted on terms to be agreed by the Director of Property working with external agents to assess a suitable market rent and terms for the occupation. Discussions on terms have continued since but Acivico have been contributing rent payments to the Trust in line with the market value. The Charity Commission whose advice has been sought over a number of issues recommends that the lease includes provision for a programme of public access and community hires which will be

accommodated. Even though Trustees will also be aware that it is agreed that the management of the whole Highbury Estate be leased to and managed by the Chamberlain Highbury Trust they are not yet in a position to undertake some management matters and it is appropriate that the agreement be completed between Highbury Trust and Birmingham City Council to allow the occupation by Acivico to continue.

As Chamberlain Highbury Trust are now seeking to make applications for external capital to undertake a full refurbishment of the building in 2019 or thereabouts the proposed lease will be of a duration to suit with options for termination on both sides and in any case of no more than three years maximum. All rent receipts will be ring-fenced to the Highbury Trust.

While this is a short lease as this is a letting back to Birmingham City Council as 'connected person' it was necessary to seek the consent of the Charity Commission and also establish a subsidiary trading company.

Full public consultation on the changes at Highbury has taken place and the occupation by Acivico is well known as a wedding/conference centre. The proposed lease terms being at full market value for the site will ensure the Trust remains compliant with all requirements set out in the Charities Act 2011.

The land is held in trust and formal approval to the grant of the lease and the actions required to effect this is now required.

C. Elford Estate – lease of School Playing Field

The Elford Estate near Lichfield comprised of 420 acres of farmland and several properties gifted to the City Of Birmingham by Francis Paget on 29th September 1936.

The Howard Primary School at Elford uses land held by the Elford Estate as a playing field for the schools use only. The lease is granted to South Staffordshire County Council for a period of 38 years from 25th December 1993 (16 years remaining) with a rental income of £225 per year. The School has converted to an Academy under the Academies Act 2010 and will be run by The Small Schools Multi Academy Trust, though the school will continue to be known as The Howard Primary School. The above statute empowers the Academy to take leases direct and it is proposed to assign the remainder of the lease to the Academy Trust backdated as appropriate to the effective transfer date for the Academy of 1st June 2015 and as the lease includes a provision against assignment negotiate a Deed of Variation to amend the lease to enable this or future assignments to take place but maintaining the restriction on its use as school playing fields only. The Academy has also requested that the lease term now be extended.

At its meeting of 22nd July 2015 the Trusts & Charities Committee agreed that the proposals to vary the lease and allow it to be assigned to The Small Schools Multi Academy Trust be advanced to Full Council as Trustee with the recommendation they be accepted.

At its meeting of 21st September 2016 the Trusts & Charities Committee considered a request from the Academy for a new 125 year lease. Having considered the matter it was considered acceptable to recommend an extended lease be granted but to limit the length of this to align with other leases granted by the Trust nearby. It is proposed that a new lease for 73 years expiring 14th May 2089 be granted on terms to be agreed by the Director of Property that this be advanced to Council as Trustee with the recommendation this be accepted.

The Elford Estate is held in trust for the benefit of the citizens of Birmingham. There is a general Scheme for the charity dated 14th May 1990 which allows for the disposal of property including leases.

The land is held in trust and formal approval to the surrender and re-grant of the lease and the actions required to effect this is now required.

D. Selly Oak Park – surrender and renewal of existing leases at 187 Harborne Lane

Selly Oak Park is mostly held in trust and originally gifted to the City Council for recreational purposes by members of the Gibbins Family. It is a Registered Charity no.522877 since 1st October 1963 and known as Public Park and Pleasure Ground Birmingham Selly Oak Park.

187 Harborne Lane is the site of the former lodge demolished in the 1980's. A Deed of Release was obtained in 1988 to relax the covenants on this section permitting the building of a care home and the grant of a 99 year lease at a low rent subject to a premium lump sum having been paid. The premises closed and the company went into receivership in May 2007 as changing legislation meant it could no longer meet the National Care standards.

In 2013 the lease was assigned by the Receiver and the new tenant sought landlords consent to extend the term of the existing lease and to a change of use from 'care for old people' to uses as described in C2 and C2A of the Town and Country Planning (Use Classes) Order 1987 (as amended) including student accommodation. There is substantial demand for single person accommodation in the area. Planning consent to convert the existing building in to a 21 bedroom block and a new stand-alone 9 bedroom block has been granted. The existing building is fully occupied. Construction of the new block was started but has ceased pending the grant of all appropriate landlords consents. Terms for a modern market rent have been agreed which will provide an income stream to the Trust for the first time. A further Deed of Release is required and will be requested.

There are many positives for the Trust and at its meeting of 20th July 2016 after much consideration the Trusts and Charities Committee agreed to recommend the proposal be advanced to the Council as Trustee. However consultation has been undertaken and concerns over the future management of the unit have been expressed by Ward Members and by the Friends of the Park and these will have to be addressed in agreeing the remaining terms of the proposed leases. Further applications will be required to be made to the Charity Commission and to the representatives of the Gibbins Family.

The land forms part of Selly Oak Park held in trust and formal approval to the surrender and re-grant of the leases is now required.

MOTIONS

That Full Council sitting as 'Council as Trustee':

A. Grove Park – disposal by long lease of land to Birmingham City Council

- i) Approves the disposal of part of the land held in Trust at Grove Park to Birmingham City Council to regularise the use of the land as a care centre for the elderly;
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- ii) and to submit to the Charity Commission an application for a Scheme/Order allowing the Trust the necessary additional powers to undertake the disposal to a connected person if required.
 - iii) Approves the disposal of that land to Birmingham City Council on a long lease for 150 years on terms to be agreed by the Director of Property from a date to be agreed at a peppercorn rent subject to a premium payment to the Trust of a minimum of £750,000.
- B. Highbury Trust – grant of lease to Acivico for the occupation of Highbury
- i) Approves that a lease be granted to Birmingham City Council to regularise the use of the premises known as ‘Highbury’ as a wedding/conference centre;
 - ii) Approves the disposal of that land to Birmingham City Council on a lease of no more than three years on terms to be agreed by the Director of Property from a date to be agreed at a market rent
- C. Elford Estate – lease of School Playing Field
- i) Approves the variation of the lease of land at Elford already used as a school playing field to enable assignments to take place including the assignment from South Staffordshire County Council to The Small Schools Multi Academy Trust on condition that it continues to be used as a school playing field.
 - ii) Approves the grant of a lease expiring 14th May 2089 to The Small Schools Multi Academy Trust on terms to be agreed, subject to the same restrictions on use.
- D. Selly Oak Park – surrender and renewal of existing leases at 187 Harborne Lane
- i) Approves accepting the surrender of the existing lease and grant two new leases on the same land, each for 125 years; the additional building and the change of use to permit uses as described in C2 and C2A of the Town and Country Planning (Use Classes); all other terms to be agreed by the Director of Property.
- E. That the Director of Property be authorised to negotiate terms and conditions of any disposal and that City Solicitor and Monitoring Officer be authorised to prepare, negotiate, execute, seal and complete all necessary documentation, including the making of applications to the Charity Commission for any purposes required to give effect to the above decisions and also to place any formal advertisements required under either s123(a) of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land.

Appendix

1. Reports and Plans presented to Trusts & Charities Committee

Chairman of the Trusts and Charities Committee

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Councillor Habib UL Rehman