

Report to:	TRUSTS AND CHARITIES COMMITTEE	Exempt information paragraph number – if private report:
Report of: Date of Decision:	Director of Property 12 th November 2015	
SUBJECT:	WILLIAM WALTER HINDE FOR OPEN SPACE (REG. CHARITY NO.522893) – LAND ADJOINING 18 ROSE HILL, LICKEY HILLS	
Key Decision: No	Relevant Forward Plan Ref:	
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>	
Relevant Cabinet Member(s) or Relevant Executive Member:	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	Outside of City Boundary	

1. Purpose of report:

- 1.1 To update the Committee on the settlement of the action to defend land at Lickey Hills held in trust from adverse possession.

2. Decision(s) recommended:

That Committee

- 2.1 notes the Court action has been resolved and a settlement agreed.

Lead Contact Officer(s):

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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 proposed action required to seek to defend this land. Officers in Legal & Democratic Services have led the action. Full consultation has also been undertaken with the Parks Service who manage the land on behalf of the Trust and Housing officers who support the actions proposed.

3.2 External

This is action taken in defence of the loss of land and consultation is not required. However the Lickey Hills Consultative Committee has been informed.

4. Compliance Issues:
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u> The objects/purposes of the Council's charitable trusts, 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" and are intended to preserve the trust estate for the future. The need to defend this land from a claim of adverse possession is unusual for trust land but not in terms of the Council portfolio generally and the same actions have been undertaken in line with procedures applied to all land.</p> <p>4.2 <u>Financial Implications</u> (Will decisions be carried out within existing finance and resources?) Actions to defend land are required to be resourced appropriately. Initial costs have been met by the Parks Service as there is no other revenue resource for the trust land.</p> <p>4.3 <u>Legal Implications</u> 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. Trustees have a duty to preserve the assets of the trust.</p> <p>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 owner on behalf of the beneficiaries. The Court Order overrides the need to obtain additional powers or authorisation.</p> <p>The settlement now agreed has resulted in the loss of a very small piece of land to adverse possession, the sale of some land at market value but preserved the majority of the land claimed.</p> <p>4.4 <u>Public Sector Equality Duty (see separate guidance note)</u> 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.</p>

5. Relevant background/chronology of key events:

- 5.1 The land now comprising the trust known as William Walter Hinde for Open Space (registered charity no. 522893) measuring 4.49 hectares was purchased on 5th July 1944 for value for open space. It was not then held in trust. The house and gardens of 18 Rose Hill were sold in 1972.
- 5.2 When land at Cofton Park held in trust was desired to be used by Birmingham City Council for its statutory functions it was agreed and sanctioned by the Charity Commission that a swap of the trust land could be effected in that in lieu of the 2.19 hectares of land then used as Parks Depot and glasshouses and to be taken out of trust the 4.49 hectares of land at the Lickeys would be placed in trust and registered as William Walter Hinde for Open Space. The declaration of trust was effected on 10th May 1996. The land is managed on behalf of the trust by Parks as part of the general Lickey Hill Country Park but this is a very well wooded area not regularly accessible to the public but held as public open space.
- 5.3 In January 2012 the City Council was informed that the owners of 18 Rose Hill sought to register additional land in their name claiming to have possessed it for in excess of 12 years. Since that time the Trust officers have undertaken action to defend the land from loss. There is no technical defence to a claim of adverse possession matters are based on facts and the law. Following advice from officers in Legal Services a Counsel's Opinion was obtained and action to preserve the land commenced. Court Action was suspended by agreement in the expectation that both parties might reach a settlement. A settlement was agreed and the Court Order (Tomlin Order) made.
- 5.4 **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 objects and purposes of the Charity are to fund general charitable activity, for the benefit, and on behalf of, the citizens of Birmingham. For a purpose to be charitable it must be one which falls within the definition of S3(1) Charities Act and is for "public benefit" as set out within S4 Charities Act 2011. The land in the William Walter Hinde for Open Space Trust is held as public open space.
- 5.5 **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 sufficient powers exist for the Trustees to make decisions on the future of these assets including disposal in the Trustee of Land and Appointment of Trustees Act 1996. All disposals proposed here will comply fully with all such requirements.
- 5.6 **Charity Finances**
Accounts are prepared for the Charity Commission returns where appropriate but there is no income or capital asset except for the land in the trust. Capital receipts from this transaction will after costs have been settled be ring-fenced to the William Walter Hinde for Open Space trust.

6. Evaluation of alternative option(s):							
6.1	There is no alternative action identified. The action was commenced and defended. 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). The land has been successfully defended as best as possible in the circumstances.						
7. Reasons for Decision(s):							
7.1	To safeguard the Trust's asset and demonstrate that action to defend the loss of land will always be undertaken.						
<table border="1"> <thead> <tr> <th>Signatures</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td> Chairman of the Trusts & Charities Committee <div>.....</div> </td> <td></td> </tr> <tr> <td> Chief Officer Director of Legal & Democratic Services <div>.....</div> </td> <td></td> </tr> </tbody> </table>		Signatures	Date	Chairman of the Trusts & Charities Committee <div>.....</div>		Chief Officer Director of Legal & Democratic Services <div>.....</div>	
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List of Background Documents used to compile this Report: None							
List of Appendices accompanying this Report (if any): None							