

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

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**1. PURPOSE/SUMMARY**

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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.

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**2. BACKGROUND**

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**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 and 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 the grant of leases, licences, easements and wayleaves.

Each charitable trust is governed by the deed under which it was established, and/or by a Charity Commission Scheme or Order where applicable. These documents will usually set out Trustees powers, 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 rely on an implied power under the Trusts of Land and Appointment of Trustees Act 1996 (the “1996 Act”. In some cases trust deeds do not provide a power of disposal and it is not possible to rely on the provisions of the 1996 Act. In those circumstances, the Trustee will need to make application to the Charity Commission for the grant of a Scheme of new management powers or an Order for the specific action. The Commission would only provide a Scheme or Order, if the Trustee can clearly demonstrate that the decision proposed is expedient in the interests of the Trust.

It is a requirement of the Charities Act 2011 that any charitable trust must carefully consider the method of disposal and achieve best value, although there are some statutory exceptions to this requirement when dealing with other charities. Where the Trusts and Charities Committee are recommending a sale of trust property, to ensure compliance with the Charities Act, it is currently most likely that the disposal will proceed by way of auction subject to a suitable reserve being set but other methods will be considered. Properties leased out will generally be advertised to the open market to ensure best value, again in compliance with the Charities Act 2011.

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### **3. MATTERS TO BE DETERMINED**

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#### **A. 669 Bristol Road – former Selly Oak Library**

Selly Oak Library was constructed and gifted to Birmingham City Council by Thomas Gibbins on 29<sup>th</sup> June 1904 and has been used for library purposes ever since. The Library closed on 1<sup>st</sup> April 2017 and proposals for its future use continue to be discussed but a release of the property in any form will be a disposal for the purposes of the Charities Act 2011. It has only recently been determined that the Library is held in trust so day to day management rests with the Trusts and Charities Committee. However, the trust deed for the Library contains no trustee power of disposal and it is not possible to rely on the 1996 Act because the premises are treated as ‘specie’ or designated land, so officers will need to make an application to the Charity Commission to seek appropriate new powers.

At its meeting on the 19<sup>th</sup> April 2017 the Trusts and Charities Committee acknowledged that the premises could no longer be used as gifted to the Council, and were therefore surplus to requirements and agreed to recommend that the property could be disposed of on terms to be agreed, compliant with all requirements set out in the Charities Act 2011. The capital receipt must be ring-fenced to the Trust and used to further the objects or purposes of the original trust, and substantially similar trust. The report proposed that as discussions continue that a further report be brought to Trust and Charities Committee for ratification once a route for disposal was agreed. It is still hoped that a sympathetic use compliant with the former uses might be found but otherwise this may require also a removal or relaxation of the restrictive covenants limiting the use of the property.

The land is held in trust and formal approval to the disposal or transfer and the actions required to effect this is now needed.

#### **B. Calthorpe Park – lease to Health & Wellbeing Service Mutual Organisation**

Calthorpe Park has been operated as a public park since 1857 with the land owned by Lord Calthorpe being transferred to the City in 1894. It is not a registered Charity but the specific objects of the trust are simply to ‘*use of the premises as a public park*’. The premises are treated as ‘specie’ or designated land. A play centre has been on the land since the 1980’s and has grown considerably since. This is now managed by the Health & Wellbeing service which desires to continue operating from this location and require their occupation to be formalised. A release of the property in any form will be a disposal for the purposes of the Charities Act 2011 but in all the time the trust has been in operation it has not obtained powers to deal with the property and before making decisions on disposal will need to make an application to the Charity Commission to seek appropriate new powers.

At its meeting of 19<sup>th</sup> July 2017 the Trusts and Charities Committee acknowledged that the occupation of part of the Park by the Health & Wellbeing service was an appropriate use of part of the park provided they continue to encourage healthy lifestyles, exercise and playing of sports. The Committee agreed to recommend that the property now used could be disposed of on a lease at terms to be agreed, compliant with all requirements set out in the Charities Act 2011 subject to making all appropriate applications to the Commission to obtain a Scheme of powers for the better management of the trust estate or an Order sanctioning the disposal of some designated land. All capital receipts will be ring-fenced to the Trust and must be used to further the objects or purposes of the trust.

The land is held in trust and formal approval to the disposal or transfer and the actions required to effect this is now needed.

### C. Small Heath Park – lease of Small Heath Park Lodge

Small Heath Park is held on the remainder of a 900 year lease from 29<sup>th</sup> September 1876 with the freehold being held by the beneficiaries of the estate of Miss Louisa A Rylands. It was acquired under powers in the Birmingham Parks Act 1854 but is treated as a gift and is held as a charitable trust. This is not a registered charity. The terms of the gift require the Park to be used for '*providing for the inhabitants of the City, parks and other places of healthful and pleasurable resort*'. An application to the Charity Commission to obtain powers for the better management of the trust holdings including power of disposal and to seek an Order from the Commission sanctioning the disposal of designated land is needed in order to extend the range of activities to include those necessary for the successful operation of a community facility at the lodge.

At its meeting of 19<sup>th</sup> July 2017 the Trust and Charities Committee acknowledged that the occupation of the Lodge and gardens thereof by a community group chosen by way of a formal selection process was appropriate, subject to further approvals and agreed to recommend that the property now identified could be disposed of on a lease at terms to be agreed, compliant with all requirements set out in the Charities Act 2011 subject to making all appropriate applications to the Commission to obtain a Scheme of powers for the better management of the trust estate or an Order sanctioning the disposal of some designated land.

All capital receipts will be ring-fenced to the Trust and must be used to further the objects or purposes of the trust.

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

### D. Cropwood Estate – Rosemary Cottage partial release of restrictive covenant

Between 1921 and 1938 Barrow Cadbury and Mrs Geraldine Cadbury gifted approximately 36.5 hectares of land for school's use although the specific objects of the Cropwood Estate trust are now very wide ranging. This gift included Rosemary Cottage, a substantial detached house, which was disposed of on 26<sup>th</sup> February 1999 when a restrictive covenant limiting the premises to being a single family residence was imposed. The current owners of Rosemary Cottage wish to develop an additional unit over the detached garage and at its meeting of 19<sup>th</sup> July 2017 the Trusts and Charities Committee acknowledged that the proposal was not detrimental to the Estate but that it was appropriate for the restrictive covenant to be released to allow this particular development only, subject to the negotiation of suitable terms for its release in compliance with the Charities Act 2011 and at market value in order that the Trust is sufficiently compensated. All receipts will be ring-fenced to the Trust. The Trust already has all necessary powers to enable the transaction to be completed.

The Cropwood Estate is a registered charity no. 1085296. The land is held in trust and formal approval to the disposal and the actions required to effect this is now required.

### E. Cropwood Estate – Hunters Hill Technology College use of land

Of the 36.5 hectares of land originally gifted at Cropwood by Barrow Cadbury and Mrs Geraldine Cadbury referred to at D above, approximately half is used for the College campus, whilst the remaining was anticipated to be used as pasture land and woods to be let on agricultural tenancies to provide an income to the Trust. The 13.34 hectares of pasture is now vacant and it is required that the trustees secure new tenants for the land. However, the College now include farm studies in their pupil curriculum and currently have use of 1.60 hectares of land dedicated for these purposes. The College now desire to increase the number and range of livestock and therefore seek additional land.

At its meeting of 19<sup>th</sup> July 2017 the Trusts and Charity Committee acknowledged that the proposal by the College to take more land into direct occupation was not detrimental to the objects of the trust or the future management of the Estate and it was prepared to recommend that a further 7.01 hectares of land be let to the College subject to the negotiation of suitable terms for its disposal such terms to be in compliance with the Charities Act 2011. The remaining land will be let in the open market on appropriate formal tenancies. Any receipts will be ring-fenced to the Trust and must be used to further the objects or purposes of the trust. The Trust already has all necessary powers to enable the disposal to proceed. It is noted that the College have a Charity arm, the Hunters Hill Charitable Trust and it may be appropriate that the letting is to that Charity.

The Cropwood Estate is a registered charity no. 1085296. The land is held in trust and formal approval to the disposal and the actions required to effect this is now required.

### **MOTIONS**

That Full Council sitting as 'Council as Trustee':

A. 669 Bristol Road – former Selly Oak Library

- i) approves that the land held in trust at 669 Bristol Road comprising the former Library can be disposed of on terms to be agreed;
- 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 of 'specie' land
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.

B. Calthorpe Park – lease to Health & Wellbeing Service Mutual Organisation

- i) agrees the occupation of the premises on the trust's land to be regularised by the grant of a formal lease.
- ii) 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'

- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- iv) authorises the disposal by way of a lease for up to 25 years from an early date to be agreed, of the land currently allocated to the Service being granted to the Health & Wellbeing Service or its mutual organisation once established.

C. Small Heath Park – lease of Small Heath Park Lodge

- i) agrees the Lodge should be brought back into community use and any occupation regularised by the grant of a formal lease.
- ii) 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
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- iv) authorises the disposal by way of a lease for up to 35 years from an early date to be agreed, of the land of the former Lodge and gardens area

D. Cropwood Estate – Rosemary Cottage partial release of restrictive covenant

- i) the restrictive covenant against the land shown on the plan in Appendix 1 be amended by Deed to allow only the proposed development

E. Cropwood Estate – Hunters Hill Technology College use of land

- i) the land identified as parcels C and D in Appendix 1 of the attached Report to the Trusts and Charities Committee dated 19 July 2017 be let to the College on terms to be agreed
- i) the remaining land is advertised as available to let marketed generally for agricultural use
- ii) and if it is determined that the letting to the College being directly operated by Birmingham City Council requires that an application for a Scheme/Order from the Charity Commission allowing the trust the necessary additional powers to undertake the disposal to a 'connected person' that can also be made

and

that the Assistant Director of Property (Interim) be authorised to negotiate and agree the terms of all agreements on behalf of the Trusts and that the City Solicitor 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 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land.

## **Appendix**

1. Various Reports presented to Trusts and Charities Committee on the dates referenced above.

Chairman of the Trusts and Charities Committee

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Councillor Habib UL Rehman