

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of: Date of Decision:	Director of Property 20th September 2017
SUBJECT:	HIGHBURY – DISPOSAL OF FORMER LODGE 98 QUEENSBRIDGE ROAD
Wards affected:	Moseley & Kings Heath

1. Purpose of report:

- 1.1 To seek approval to dispose of the former caretakers lodge at 98 Queensbridge Road, forming part of the Highbury Estate.

2. Decisions recommended:

That the Committee

- 2.1 notes that the property is currently vacant and although safeguarded by a guardian occupation, is principally unimproved and in need of capital improvements but no longer required as residential accommodation by the Chamberlain Highbury Trust.
- 2.2 approves the proposal to negotiate a disposal of the freehold interest on terms to be agreed of the house and grounds set out in Appendix 1.
- 2.3 approves the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust provided that appropriate restrictions are included in the disposal terms to properly safeguard the Trust.
- 2.4 authorises the recommendations of the Trusts and Charities Committee be advanced to a future meeting of the Council as Trustee for approval the report to which will be approved by this Committee first.
- 2.5 authorises the Acting City Solicitor and Monitoring Officer to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation.
- 2.6 authorises the Acting City Solicitor and Monitoring Officer to make any further applications necessary for appropriate powers or approvals from the Charity Commission or other party or body as appropriate to agree to the disposal and to then prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

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3. Compliance:

3.1 Consultations:

No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the Charities Act 2011.

3.2 Are there any relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision making to the Trusts and Charities Committee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the Estate will be governed by the charity's Trust document as amended by any Scheme approved by the Charity Commission.

The Highbury Trust holds the freehold interest of the land in trust as Sole Trustee. Actions proposed are required to be in the best interests of the trust and are intended to preserve the trust estate for the future. To effect a disposal the Trustees of the Charity could rely on the provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal or seek a scheme or Order from the Charity Commission to enable a specific disposal or a general power of disposals provided such disposals are conducted in line with statutory processes set out in the Charities Acts and that the proceeds of any sale be invested in trust for the Elford Estate.

3.3 How will decisions be carried out within existing finances and resources?

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects and purposes of the trust and charity law. Any disposal of the land, if approved, will be undertaken by officers in Legal Services and Birmingham Property Services. The valuation of the asset will have to be undertaken by an external valuer as required under the Charities Act 2011 and the fee for this will be reclaimed from any capital receipt.

The property is a two bedroomed detached house with gardens and should sell well even though it is unimproved with an external toilet and no central heating. Although not listed in its own right it is within the curtilage of Highbury and in terms of works will likely be considered as if it were listed. It was previously let on a service tenancy to the widow of the former caretaker for Chamberlain House and is currently vacant and not suitable to let without improvement. It currently produces no rent and is considered most appropriate to sell the freehold interest and avoid depleting the funds otherwise allocated for Highbury. The removal of this land from estate ownership is not detrimental to the estate but removes an area of land not easily managed or safeguarded.

3.4 Main Risk Management and Equality Impact Assessment Issues (if any):

N/A. 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. However, no decision is made until the 'Council as Trustee' has determined it is expedient in the interests of the charity to act.

4. Relevant background/chronology of key events:

- 4.1 The estate comprises approximately 13.03 hectares (32.2 acres) of park land including Highbury Hall and Chamberlain House and three lodges. The estate was gifted by the heirs of the Right Honourable Neville Chamberlain on 31st March 1932 and is held in trust as Registered Charity no 1039194 since 1994. Approved disposals have taken place previously.
- 4.2 In 2016 the widow of the former service occupant was relocated by the family and the property became vacant. Having considered all options it is necessary that the property and gardens shown on Appendix 1 be considered for a disposal. The proposal to dispose of part of the estate is appropriate as the property will cost too much to renovate at a time when all funds are committed to the refurbishment of 'Highbury'. The lodge is detached though shares a driveway with the adjoining property and has sufficient independent gardens to allow for the purchasers to undertake renovation or improvements. The objects of the charity as set out in paragraph 4.5 are necessarily limited but will enable the future management of the estate without hindrance.
- 4.3 Any disposal would be required to be at the full market value of the asset as assessed by an independent qualified valuer though any disposal will include restrictive covenants to protect the remainder of the estate but would not seek to prevent reasonable extensions to the property within the land sold and thereby restrict its value. Any capital receipt will accrue to trust funds and interest would be used to further the Objects.
- 4.4 The other lodges are occupied with 92 Queensbridge Road being the base for the four Seasons Gardeners and the gatehouse at Moor Green Road being let to a former employee.

4.5 Aims and Objectives of the Charity

Each charitable asset is held as a separate trust and decisions need to be in the best interests of that trust. The terms of the gift simply provided that the Trustees should hold them "in the first instance for use as a hospital for the treatment of limbless and other soldiers, sailors or pensioners" and "if and when the Trustees should consider that they were no longer needed for those purposes the Trustees should hold the property for such public purposes as they with the consent of the Corporation of Birmingham might determine or might at the request of the Corporation transfer it to them for the general benefit of the Citizens of Birmingham". The Trust secured additional powers through the Charity Commission Scheme to effect disposal.

4.6 Trustee Powers

The charity's constitution is set out within the executed Trust Deed, principally the acquisition deeds or as amended by any Scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the governing documents however 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 the assets.

4.7 Charity Finances

Formal accounts are required to be prepared for the Charity Commission returns where appropriate. The Trust has a strong revenue stream principally from the letting of Highbury to Acivico for the continuing use of the property as a wedding/conference centre.

5. Evaluation of alternative option:

- 5.1 To do nothing is no longer an option as insufficient funds are available for the trust to undertake works to create or manage a residential letting and a disposal by sale or by lease must be considered. A disposal by sale is considered the most appropriate manner to maximise the benefit to the Estate.

6. Reasons for Decision(s):

6.1 To best safeguard the asset long term it is appropriate to release it from the estate by disposal and convert the property to a capital receipt.

Date

Signatures

Chairman of the Trusts & Charities Committee

Chief Officer
Director of Property

List of Background Documents used to compile this Report:

1. None.

List of Appendices accompanying this Report (if any):

1. Plan of the property and gardens included in disposal