

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

COUNCIL AS TRUSTEE

TUESDAY, 07 NOVEMBER 2017 AT 13:45 HOURS
IN COUNCIL CHAMBER, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 NOTICE OF RECORDING

Lord Mayor to advise that this meeting will be webcast for live or subsequent broadcast via the Council's Internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

3 - 6

2 MINUTES

To confirm and authorise the signing of the Minutes of the Meeting of the Council as Trustee held on 12 September 2017

7 - 28

3 A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY COUNCIL AS TRUSTEE

(15 Minutes allocated) (1345-1400)

To consider a report of the Trust and Charities Committee.

Councillor Habib Rehman to move the following Motion:

“That Full Council sitting as ‘Council as Trustee’:

A. Highbury – Disposal of former lodge 98 Queensbridge Road

i) 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.

ii) 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.

B. Moseley Road Community Centre (Friends Institute), 220 Moseley Road

- i) notes the report approved at Committee on 3rd July 2013 and the continuing desire to release the premises in the open market for community purposes or, if needs be, other uses and that this will ultimately require powers to enable the disposal of the premises by sale or by the grant of a formal lease or leases, but for which no existing power exists.
- ii) confirms that Expressions of Interest from the third sector with a view to transferring management or ownership of the building be sought in line with the terms approved by Committee on 3rd July 2013
- iii) authorises that separately applications be made to the Charity Commission to obtain a further revision to the existing Scheme for the better management of the trust assets including powers of disposal, winding up the Charity if appropriate and/or seeking to widen the charitable activities at the premises
- iv) authorises, if necessary, the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenants limiting the use of the premises that might hinder disposal or future use
- v) authorises the disposal of the premises by way of a sale or by a lease, for up to 35 years from an early date to be agreed, to an appropriate organisation or persons to be determined via the proposed marketing and selection procedures

C. Elford Estate – disposal of land adjoining Paget House

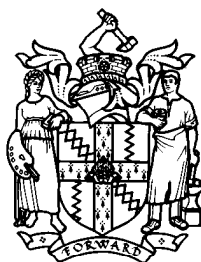
- i) notes that land identified on the plan in Appendix 1 is land not accessible to the general public and provides no community function for the Elford trust nor provides any opportunity for further development
- ii) approves the proposal to negotiate a disposal of the freehold interest on terms to be agreed of portions of this land to the owner of the adjoining Paget House.

and

that the Assistant Director of Property (Interim) be authorised to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of property and to negotiate and agree the terms of all agreements on behalf of the Trusts provided that appropriate restrictions are included in the disposal terms to properly safeguard the individual Trust

and

that the 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 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land, manage any appropriate consultation stages and to appraise the Trusts and Charities Committee of the results of that consultation."



COUNCIL AS TRUSTEE 12 SEPTEMBER 2017

**MINUTES OF A MEETING OF THE
COUNCIL AS TRUSTEE COMMITTEE
HELD ON TUESDAY 12 SEPTEMBER 2017
AT 1345 HOURS IN THE COUNCIL CHAMBER,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT:- Deputy Lord Mayor (Councillor Carl Rice) in the Chair.

Councillors

Muhammad Afzal	Neil Eustace	Narinder Kaur Kooner
Deirdre Alden	Mohammed Fazal	Chaman Lal
John Alden	Mick Finnegan	Bruce Lines
Robert Alden	Des Flood	Mary Locke
Tahir Ali	Carole Griffiths	Ewan Mackey
Sue Anderson	Peter Griffiths	Majid Mahmood
Gurdial Singh Atwal	Paulette Hamilton	Karen McCarthy
Mohammed Azim	Andrew Hardie	Gareth Moore
David Barrie	Roger Harmer	Yvonne Mosquito
Bob Beauchamp	Kath Hartley	Brett O'Reilly
Kate Booth	Barry Henley	John O'Shea
Sir Albert Bore	Des Hughes	David Pears
Randal Brew	Jon Hunt	Victoria Quinn
Marje Bridle	Shabrana Hussain	Hendrina Quinnen
Mick Brown	Timothy Huxtable	Habib Rehman
Alex Buchanan	Mohammed Idrees	Fergus Robinson
Andy Cartwright	Zafar Iqbal	Gary Sambrook
Tristan Chatfield	Ziaul Islam	Rob Sealey
Zaker Choudhry	Kerry Jenkins	Mike Sharpe
Debbie Clancy	Meirion Jenkins	Claire Spencer
Liz Clements	Simon Jevon	Stewart Stacey
Lyn Collin	Julie Johnson	Sharon Thompson
Maureen Cornish	Brigid Jones	Paul Tilsley
John Cotton	Carol Jones	Margaret Waddington
Basharat Dad	Nagina Kauser	Ian Ward
Phil Davis	Tony Kennedy	Mike Ward
Diane Donaldson	Ansar Ali Khan	Alex Yip
Peter Douglas Osborn	Changeese Khan	Waseem Zaffar

Barbara Dring

Mariam Khan

NOTICE OF RECORDING

- 25 The Deputy Lord Mayor advised that the meeting would be webcast for live and subsequent broadcasting via the Council's internet site and that members of the Press/Public may record and take photographs except where they were confidential or exempt items.

APPOINTMENT OF THE INTERIM LEADER OF THE COUNCIL

The Deputy Lord Mayor advised the meeting that following yesterday's resignation of Councillor John Clancy as Leader of the Council, he was to call upon Councillor Stewart Stacey to move an appropriate Motion which was seconded by Councillor Brigid Jones.

The Motion having been moved and seconded was put to the vote and by a show of hands was declared to be carried.

It was –

- 26 **RESOLVED:-**

That Council as Trustee notes that City Council is to confirm the interim appointment of Councillor Ian Ward as Leader of the Council pending a permanent appointment at a future meeting.

MINUTES OF LAST MEETING

- 27 **RESOLVED:-**

That the Minutes of the meeting of Council as Trustee held on 4 April 2017, having been printed and a copy sent to each Member of the Council as Trustee, be taken as read and confirmed and signed.

A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY COUNCIL AS TRUSTEE

The following report of the Trusts and Charities Committee was submitted:-

(See document No. 1)

Councillor Habib Rehman moved the motion which was seconded.

A debate ensued.

Councillor Habib Rehman replied to the debate.

The Motion having been moved and seconded was put to the vote and by a show of hands was declared to be carried.

It was therefore -

28

RESOLVED:-

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 – lease to Hunters Hill Technology College and of other parcels of land

- i) the land identified as parcels C and D in Appendix 1 be let to the College on terms to be agreed
- ii) the remaining land is advertised as available to let marketed generally for agricultural use
- iii) 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.

The meeting ended at 1400 hours.

.....
CHAIRMAN

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 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.

3. MATTERS TO BE DETERMINED

A. Highbury – Disposal of former lodge 98 Queensbridge Road

The estate comprises approximately 13.03 hectares (32.2 acres) of park land including Highbury Hall and Chamberlain House and three lodges gifted by the heirs of the Right Honourable Joseph Chamberlain on 31st March 1932 and is held in trust as Registered Charity no 1039194.

Approval has already been given to grant a lease of the whole estate to the Chamberlain Highbury Trust (Registered Charity no 1169845) who will manage the estate in future and seek funds to refurbish Highbury.

The lodge having been vacated in 2016 is currently protected by a live-in guardian but is in very basic unimproved condition. At its meeting of 20th September 2017 the Trusts and Charities Committee acknowledged that officers having considered all other options to refurbish and re-use the lodge it is more appropriate to preserve all existing capital and accrued revenue in the Highbury Trust to maximise the matchfunding for the proposed HLF bids for Highbury and to dispose of the Lodge and its garden as shown on the plan in Appendix 1.

The trustees of the Chamberlain Highbury Trust also agree to the proposed disposal of the property and the reuse of the capital receipt as additional matchfunding.

The trust has the power to make disposals. Approved disposals have taken place previously. Any disposal would be required to be at the full market value of the asset as assessed by an independent qualified valuer. Any capital receipt will accrue to trust funds and interest would be used to further the Objects.

A disposal by sale is considered the most appropriate manner to maximise the benefit to the Estate.

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. Moseley Road Community Centre (Friends Institute), 220 Moseley Road

The City Council has managed the property now known as Moseley Road Community Centre since the original gift on 25th March 1903 by Charles Alston Smith-Ryland, Thomas Frederick Chavasse and others. The property was further expanded on 12th April 1935 being acquired for nil value from Charles Watkins & another. The premises are held in trust as Registered Charity no. 516602. The premises are a large Victorian Grade 2 Listed building in need of substantial repairs.

There is considerable affection for the premises and a preference that community uses be retained and for some years there has been a desire to enable the property to be managed by others better positioned to seek external capital and revenue funding sufficient to revitalise the premises. A report to effect this was approved at Trusts and Charities Committee on 3rd July 2013 but not progressed for various reasons but its disposal is once again supported by the Committee. To do so will require the opportunity for others to manage the premises by the grant of a lease to be advertised and a selection process put in place to consider all applications received.

However, as neither the original conveyances nor the existing Scheme or its amendments provide the trust with appropriate powers to progress this it is necessary to seek from the Charity Commission a further Scheme or Order which will provide the trust with the powers required for the modern management of a trust and the mechanisms for disposal by sale or lease of part or the whole premises and also to enable change to or for the winding up of the charity, if that ever becomes appropriate.

To seek opportunities to better safeguard the premises it is now proposed that the applications to the Charity Commission be made and if new powers are granted that the premises be marketed with Expressions of Interest be sought from the third sector with a view to transferring management or ownership of the building. Other applications may be required to remove or amend the restrictive covenants placed on the conveyances or to widen the use of the premises to reflect current and proposed user groups.

If having fully tested the market it is not possible to secure a letting the retention of the Community Centre is not viable within current Birmingham city council budgets and it is likely that the premises will be sold.

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. Elford Estate – disposal of land adjoining Paget House

The Elford Estate Charity is formed from a single gift from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692. The trust has existing powers to make disposals by sale or lease and approved disposals have taken place previously in the vicinity.

The proposal to dispose of a further part of the estate is appropriate as the area of land is difficult to manage. It is not accessed by the public and its disposal is not considered to be detrimental to the remainder of the Estate. It is unlikely the sale of the whole area identified will be agreed but it is in the best interest of the Trust to continually seek to limit the Trusts commitments on the physical estate to minimise the impact of management costs on the Trust's income and the undertaking of the objects of the trust. Any disposal would be required to be at full market value as assessed by an independent qualified valuer.

If disposal is judged to be in the best interests of the charity the preference is to sell the freehold interest as the property is detached from the remainder of the Estate now and while there is no likelihood of further development restrictive covenants can be included in the disposal to limit future uses and ensure appropriate safeguards are provided to the remaining land of the Trust. The disposal of this land creates a capital receipt to the Trust while the nature of the land remains unchanged and continues to support the Objects of the Charity.

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

MOTIONS

That Full Council sitting as 'Council as Trustee':

A. **Highbury – Disposal of former lodge 98 Queensbridge Road**

- i) 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.
- ii) 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.

B. **Moseley Road Community Centre (Friends Institute), 220 Moseley Road**

- i) notes the report approved at Committee on 3rd July 2013 and the continuing desire to release the premises in the open market for community purposes or, if needs be, other uses and that this will ultimately require powers to enable the disposal of the premises by sale or by the grant of a formal lease or leases, but for which no existing power exists.
- ii) confirms that Expressions of Interest from the third sector with a view to transferring management or ownership of the building be sought in line with the terms approved by Committee on 3rd July 2013
- iii) authorises that separately applications be made to the Charity Commission to obtain a further revision to the existing Scheme for the better management of the trust assets including powers of disposal, winding up the Charity if appropriate and/or seeking to widen the charitable activities at the premises
- iv) authorises, if necessary, the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenants limiting the use of the premises that might hinder disposal or future use
- v) authorises the disposal of the premises by way of a sale or by a lease, for up to 35 years from an early date to be agreed, to an appropriate organisation or persons to be determined via the proposed marketing and selection procedures

C. **Elford Estate – disposal of land adjoining Paget House**

- i) notes that land identified on the plan in Appendix 1 is land not accessible to the general public and provides no community function for the Elford trust nor provides any opportunity for further development
- ii) approves the proposal to negotiate a disposal of the freehold interest on terms to be agreed of portions of this land to the owner of the adjoining Paget House.

and

that the Assistant Director of Property (Interim) be authorised to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of property and to negotiate and agree the terms of all agreements on behalf of the Trusts provided that appropriate restrictions are included in the disposal terms to properly safeguard the individual Trust

and

that the 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 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land, manage any appropriate consultation stages and to appraise the Trusts and Charities Committee of the results of that consultation.

Appendix

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

Chairman of the Trusts and Charities Committee

.....
Councillor Habib UL Rehman

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.

Lead Contact Officers:	Nigel Oliver
Telephone No: E-mail address:	0121 303 3028 nigel.g.oliver@birmingham.gov.uk

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 Joseph 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.

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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



Birmingham
City Council

Waheed Nazir
Corporate Director, Economy
1 Lancaster Circus
Birmingham, B2 2GL.

98 Queensbridge Road
Kings Heath



SCALE

DRAWN

DATE _____

1:1,250

Bharat Patel

30/08/2017

O.S.Ref SP0782NW

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Corporate Director of Place
Date of Decision:	20 September 2017
SUBJECT:	MOSELEY ROAD COMMUNITY CENTRE (FRIENDS INSTITUTE) 220 MOSELEY ROAD, B12 ODG
Wards affected:	Sparkbrook

1. Purpose of report:

To seek approval to obtain revised management powers including powers of disposal for the Moseley Road Community Centre, held in trust and progress the marketing and disposal of the property.

2. Decisions recommended:

That the Committee

- 2.1 notes the report approved at Committee on 3rd July 2013 and the continuing desire to release the premises in the open market for community purposes or, if needs be, other uses and that this will ultimately require powers to enable the disposal of the premises by sale or by the grant of a formal lease or leases, but for which no existing power exists.
- 2.2 confirms that Expressions of Interest from the third sector with a view to transferring management or ownership of the building be sought in line with the terms approved by Committee on 3rd July 2013
- 2.3 authorises that separately applications be made to the Charity Commission to obtain a further revision to the existing Scheme for the better management of the trust assets including powers of disposal, winding up the Charity if appropriate and/or seeking to widen the charitable activities at the premises
- 2.4 authorises, if necessary, the making of applications including a Deed of Release from the gifter's family seeking to remove or amend the restrictive covenants limiting the use of the premises that might hinder disposal or future use
- 2.3 authorises the disposal of the premises by way of a sale or by a lease, for up to 35 years from an early date to be agreed, to an appropriate organisation or persons to be determined via the proposed marketing and selection procedures
- 2.4 delegates to the Assistant Director of Property (Interim) authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the property and negotiate the terms of that disposal
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease including the applications to the Charity Commission to give effect to the above recommendations and to remove or amend the restrictive covenant and to apprise the Committee of the results of the applications, consultation and marketing.
- 2.6 and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval

Lead Contact Officers:	Lesley Poulton, Head of Ladywood District, Neighbourhood & Communities Division Place Directorate
Telephone No:	0121 303 2932
E-mail address:	lesley.poulton@birmingham.gov.uk

3. Compliance:

3.1 Consultations:

Internal

Sparkbrook Ward Councillors have been made aware of the proposal to seek expressions of interest from other parties to take over responsibility for the Trust (as per the 2013 Committee resolution); and of the need to seek permissions to dispose of the building by lease or sale (Outline Options Paper 05.04.17; e-mails of 22.06.17 and 31.08.17). Pending the receipt of specific proposals, the Councillors have not expressed a view about the options.

External

Public consultation regarding this report is required only as it may be necessary to satisfy the requirements of the Charity Commission in support of the proposed applications to them. Accordingly officers in the Place Directorate, as the current managers of the premises, have opened consultation with existing users to advise them of the proposed intentions of this report. Similar consultation is understood to have taken place before and after the earlier report but matters were not otherwise progressed at that time. At a meeting with user groups representatives on 13th July 2017 it was determined that a new Scheme would be required as soon as possible.

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

Birmingham City Council is the named Custodian Trustee for the Moseley Road Community Centre with the former Leisure Services Committee named as the Managing Trustees. However, current advice is that the Committee no longer exists nor is there a direct successor committee to delegate this to.

The City Council has delegated day to day decision-making to the Trusts and Charities Committee with final decisions on a disposal of land or assets being made by Council as Trustee. The Trusts & Charities Committee can initiate actions to assist the future management of the Trust. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission.

Moseley Road Community Centre is held freehold. The land and property forming the Centre was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance. Disposal in this instance may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties.

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

As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards and exercises a duty of prudence to ensure that the charity is solvent and appropriate cost controls are in place. Currently all costs are covered by the City Council's Neighbourhood & Communities Division but they no longer have a budget to do so and it is appropriate that new powers are obtained as soon as possible to enable the Service to market the premises and seek alternative ways forward for the premises. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011. Revenue is ring-fenced and invested in trust for the Charity. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer.

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

Not applicable. 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.

4. Relevant background/chronology of key events:

- 4.1 On 25th March 1903 the property 220 Moseley Road was transferred to Birmingham City Council by Charles Alston Smith-Ryland, Thomas Frederick Chavasse and others. On 12th April 1935 the land now at 218 Moseley Road (the current Caretaker's Flat and car park) was added being acquired for nil value from Charles Watkins & another. The premises are held in trust and were registered as charity no. 516602 on 14 January 1986, known as Moseley Road Community Centre. The building is Grade 2 Listed.
- 4.2 The Friends Institute first opened in 1897 and included both the building currently known as the Moseley Road Community Centre then comprising a coffee shop, Quaker Reading Rooms and a range of smaller rooms principally used then for adult education and the property at the rear on Oughton Road now used by the New Testament Church of God which was the Quaker Assembly Rooms and a basement gymnasium. The Cadbury Family continued to own the Oughton Road premises holding these under a charitable trust known as 'The Friends Hall and Institute Moseley Road' until 1963 when they ended the trust and sold the premises in the open market.
- 4.3 The previous report to Committee on 3rd July 2013 was approved but matters were not actively progressed due to further reorganisation within the Hall Green District. The report approved that Expressions of Interest from the third sector to operate the Community Centre be sought subject to a further report to Committee reporting the outcomes of that exercise and to determine if a disposal should take place. The proposal now is to allow that marketing to progress and also to seek a revised Scheme or Order from the Charity Commission. This is necessary as neither the original conveyances nor the existing Scheme granted on 14th October 1982 nor the amendments on in 29th August 1984 or 12th April 1988 provide powers required for the modern management of a trust nor any mechanism for disposal or change or winding up the charity if that becomes appropriate. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so in this instance will require that all occupations be properly documented and that any actions of the trust are made within its existing powers or such powers as will be enabled by the grant of a further revision to the Scheme by the Charity Commission. Other applications may be required to remove or amend the restrictive covenants placed on the conveyances or to widen the use of the premises to reflect current and proposed user groups.
- 4.4 **Aims and Objectives of the Trust**
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust which here is *"the provision and maintenance of an institute or centre for the benefit of the inhabitants of the City of Birmingham or some part of it (a) for educational purposes; (b) for purposes of recreation and other leisure time occupation with the object of improving the conditions of life for the said inhabitants; (c) for other charitable purposes (not excluding religious purposes but excluding the relief of poverty)"*.
- 4.5 **Trustee Powers**
A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds or as amended by a Scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers exist or can be obtained for the Trustees to make decisions on the future of the assets including disposals but this will require applications to the Charity Commission for a further revised Scheme.
- 4.6 **Trust Finances**
The property has been managed and maintained by Birmingham City Council Place Directorate but is not in good condition. The sole asset of the trust is the property. The trust's revenue is obtained by the hiring of space at the centre. Accounts are up to date.

5. Evaluation of alternative options:

5.1 This report seeks approval to make appropriate applications to enable change and modernisation at the Centre.

- To do nothing is not an appropriate option as the City Council cannot afford to continue to operate this building on the current arrangements and is seeking expressions of Interest from appropriate persons to lease or purchase the premises subject to Council as Trustee and Charity Commission approvals.
- The premises require capital expenditure and other parties may be better placed to apply for such funds than the City Council.
- Without a power of disposal the Trust cannot grant leases or otherwise dispose of the premises to enable the property to be refurbished or the re-organisation of its management structures
- If the attempts to market the premises for community purposes fail to find a suitable bidder it is likely that the premises will have to be sold on the open market

6. Reasons for Decision(s):

6.1 To comply with regulations, for the better safeguarding of the Trust's assets and seek to retain services for the community.

Signatures:

Chief Officer(s):

J. Kennedy

Dated:

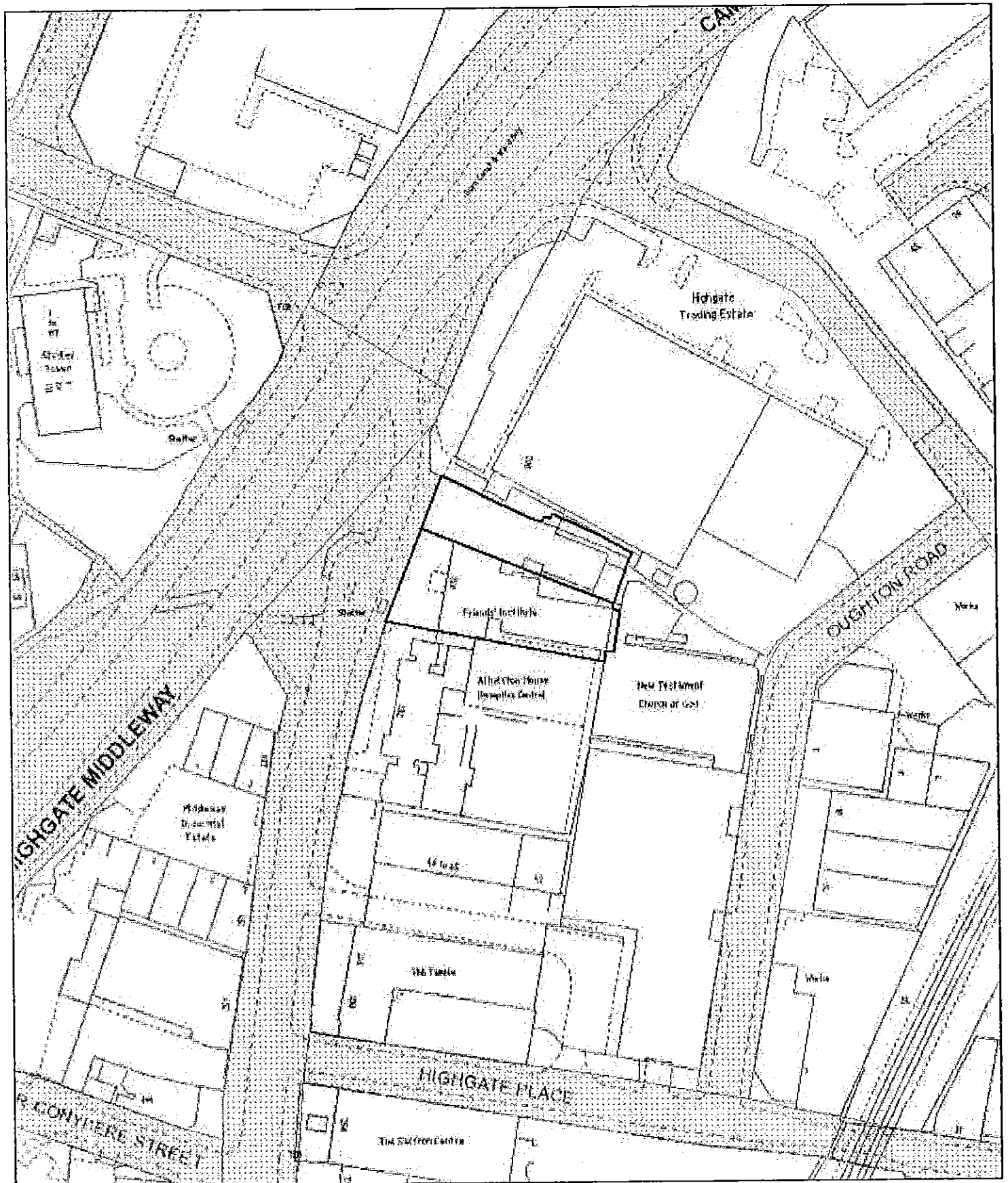
7/9/2017

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 25th March 1903
2. Deed of Acquisition dated 12th April 1935
3. Schemes of the Trust dated 14th October 1982 and amendments on 29th August 1984 and 12th April 1988
4. Report to the Trusts & Charities Sub-Committee of 3rd July 2013

List of Appendices accompanying this Report (if any):

1. Plans of the premises.



Birmingham City Council Map Created By:

Notes

Date of Map Creation: 17/07/2017

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Scale:
1:1,250

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of: Date of Decision:	Director of Property 20th September 2017
SUBJECT:	ELFORD ESTATE – DISPOSAL OF LAND ADJOINING PAGET HOUSE
Wards affected:	Outside of the City Boundaries

1. Purpose of report:

- 1.1 To seek approval to dispose of land forming part of the Elford Estate.

2. Decisions recommended:

That the Committee

- 2.1 notes that land identified on the plan in Appendix 1 is land not accessible to the general public and provides no community function for the Elford trust nor provides any opportunity for further development
- 2.2 approves the proposal to negotiate a disposal of the freehold interest on terms to be agreed of portions of this land to the owner of the adjoining Paget House.
- 2.2 approve 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.

Lead Contact Officers:	Nigel Oliver
Telephone No: E-mail address:	0121 303 3028 nigel.g.oliver@birmingham.gov.uk

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. The Elford Estate is outside of the City boundaries and falls within the parishes of Elford and Whittington & Fisherwick and the secretaries of the Parish Councils are informed of works which affect the public areas of the estate.

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 Elford Estate 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. 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, however, the Elford Estate Charity Commission Scheme dated 14th May 1990 establishing the regulation of the Charity also provides appropriate powers for the disposal of assets by sale or for lease without further approval by the Charity Commission 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. Bruton Knowles are appointed to assist the management of the Estate and have provided valuation advice.

The land is isolated behind the original boundary wall of Elford Hall and has never been open to public access. It is a mix of woodland and grassed areas. It currently produces neither rent nor costs and has no development value or alternative use other than as additional garden to the adjoining houses. 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 Elford Estate Charity is formed from a single gift from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692 registered 25 October 1990. The Elford Estate Charity Commission Scheme dated 14th May 1990 permits disposals by sale or lease. Approved sales have taken place previously in the vicinity.
- 4.2 The proposal to dispose of part is appropriate as the area of land is identified as difficult and expensive to manage and it is appropriate to limit the Trusts commitments there. The objects of the charity as set out in paragraph 4.6 are wide ranging but the inaccessibility of this particular area and the maturity of the woodland there has always meant it is not used by the public and a proposal to dispose would enable the property to continue to be open garden land and still satisfy the Object of preserving the rural nature of the estate. Any disposal would be required to be at the full market value of the asset as assessed by an independent qualified valuer though disposal value is tempered by the cost of future management by the purchaser. Any capital receipt will accrue to trust funds and interest would be used to further the Objects.
- 4.3 In 2016 the former owner of Paget House sought to establish ownership over a portion of this land by seeking a first registration at the Land Registry which was opposed and defeated. The new owner of Paget house has requested to purchase parts of this land.
- 4.4 In considering the request for a disposal of the land due consideration must be given to the future management of the estate as a whole. The land has no independent access being positioned behind a Grade 2 Listed wall that formerly bounded the Elford Hall. The Hall was demolished in the mid 1960's and areas of land there disposed of in plots in 1980. Investigation with the local planning authority confirms there is no further development opportunity and therefore the disposal of the land appears not to be detrimental to the Estate.
- 4.5 If disposal is judged to be in the best interests of the charity the preference is to sell the freehold interest as the property is detached from the remainder of the Estate. It is unlikely the sale of the whole area will be agreed but it is in the best interest of the trust to remove as many management obligations as possible in this location.

4.6 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 objects of the Elford Estate Charity are 'the promotion of the healthy recreation of the inhabitants of the City of Birmingham' and 'the preservation of the rural nature of the estate'. The disposal of this land creates a capital receipt to the Trust while the nature of the land remains unchanged and continues to support the Objects of the Charity.

4.7 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.

4.8 Charity Finances

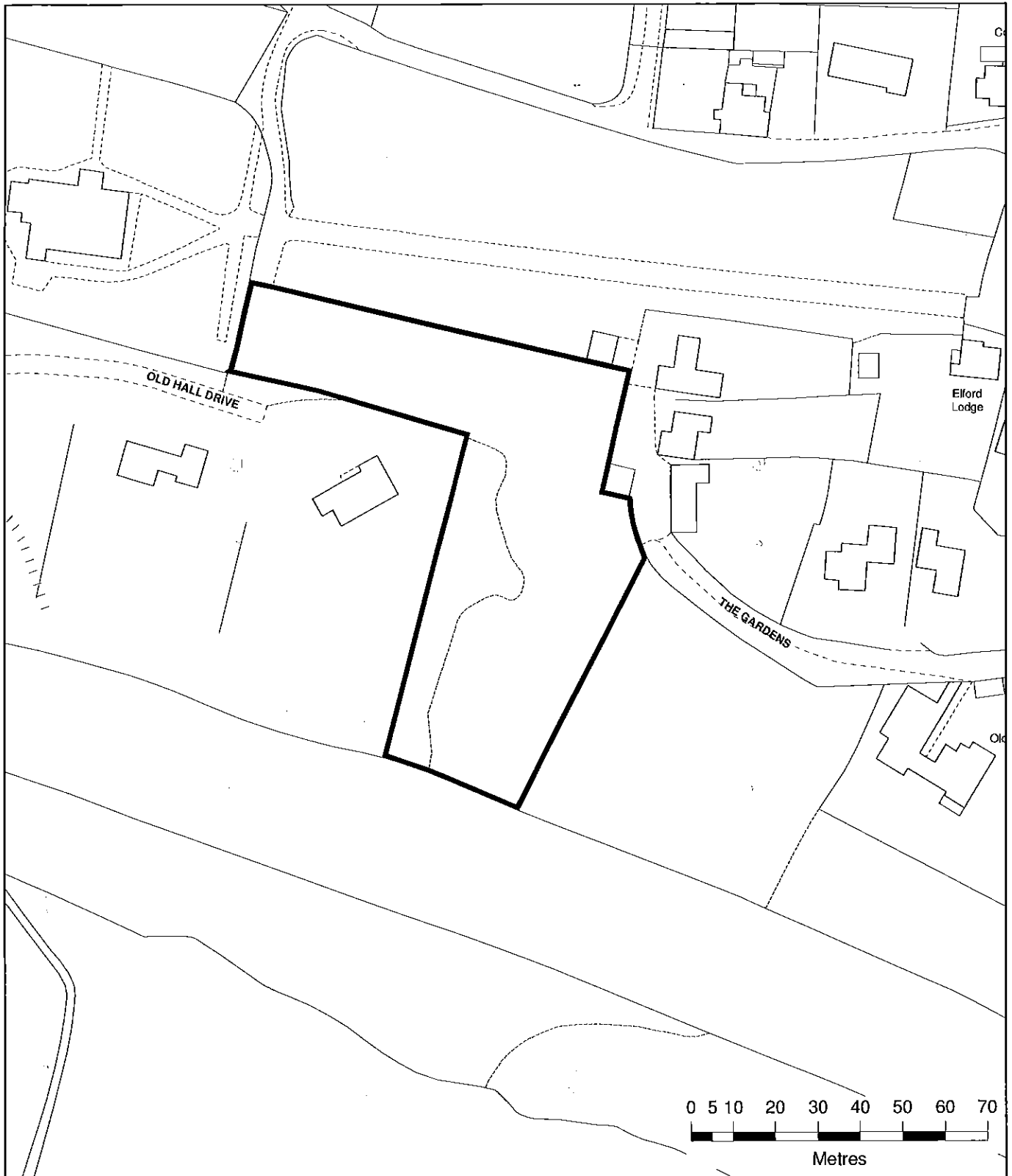
Formal accounts are required to be prepared for the Charity Commission returns where appropriate. The Trust has a strong revenue stream principally from the letting of the main agricultural land holding comprised in Home Farm plus other smaller lettings.

5. Evaluation of alternative option:

- 5.1 To do nothing is of course a possible option and the Trust would continue to manage the land. However it is appropriate that land not capable of being safely available to the public should be considered for disposal by sale or by lease. A disposal by sale is considered the most appropriate manner to maximise the benefit to the Estate and restrictive covenants can be included in the disposal to ensure appropriate safeguards are provided to the remaining land of the Trust.

6. Reasons for Decision(s):	
6.1 To secure legitimate occupation of land while also ensuring on-going compliance with and the Objects and purposes of the Charity for the future.	
Signatures	
Chairman of the Trusts & Charities Committee
Chief Officer Director of Property
List of Background Documents used to compile this Report:	
1. Charity Commission Scheme dated 14 May 1990.	
List of Appendices accompanying this Report (if any):	
1. Plan of the trust ownership adjoining Paget House.	

Date



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Birmingham
City Council

Waheed Nazir
Corporate Director, Economy
1 Lancaster Circus
Birmingham, B2 2GL.

Land Adjoining Paget House
Old Hall Drive
Elford



SCALE

1:1,250

DRAWN

Bharat Patel

DATE

29/08/2017

O.S.Ref SP1810NE