

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE**PUBLIC REPORT**

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of: Date of Decision:	Assistant Director of Property (Interim) 19th July 2017
SUBJECT:	CROPWOOD ESTATE – ROSEMARY COTTAGE PARTIAL RELEASE OF RESTRICTIVE COVENANT
Wards affected:	Outside of the City Boundaries

1. Purpose of report:

- 1.1 To seek approval to negotiate and settle terms for the variation of the existing restrictive covenant against development to allow the first floor of the detached garage to be converted to a residential unit.

2. Decisions recommended:

That the Committee recommends that

- 2.1 the restrictive covenant against the land shown on the plan in Appendix 1 be amended by Deed to allow only the proposed development
- 2.2 the recommendation of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval
- 2.3 approval be given to delegate to the Assistant Director of Property (Interim) to value and negotiate a settlement of the terms for matters in 2.1 ensuring all matters are in compliance with statutory requirements of the Charities Act 2011
- 2.4 authorises the City Solicitor to negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

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3. Compliance:

3.1 Consultations:

Internal

Colleges request. The land is outside of the City boundaries and no Member involvement beyond the Committee is required. The Cropwood estate is nominally managed by People directorate and officers in Education are willing to support the proposal. .

External

Public consultation is not required but may be undertaken. The proposed development has already been subject to a Planning Application considered by Bromsgrove District Council which enabled local objections to be considered.

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 Trust document as amended by any Scheme approved by the Charity Commission.

The Cropwood Estate Trust holds the freehold interest of the land held in trust as Sole Trustee and is responsible for ensuring the Trust is managed in accordance with the governing document and in accordance with charity law and relevant Charity Commission guidance.

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 Charity Commission Scheme dated 12th November 1997, establishing the regulation of the Charity also provides appropriate powers for the disposal of assets by sale or for lease. It requires that all such disposals be 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 Charity and is sufficient to permit the proposed negotiations.

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 of the trust and charity law. The Trustees must act with prudence and must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. Principal revenue costs for the Estate are covered by the Education Service. Any release of the restrictive covenant is treated as a disposal and will be conducted in line with statutory processes set out in the Charities Act 2011 and any receipt ring-fenced and invested for the specific Charity.

The Cropwood trust is empowered to undertake disposals of land and property on the Estate subject to the appropriate investment of the capital receipt. The disposal will add to the Trust's reserves without changing the nature of the area. Disposals of parts of the estate have already been made in 1994, 1998 and 2017.

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 The main area of land comprising the Cropwood Estate was gifted to the City either jointly or separately by Barrow Cadbury and Mrs Geraldine S Cadbury in three main transfers dated 1st June 1921, 28th February 1933 and 20th May 1938 and is approximately 36.5 hectares. It was gifted principally for School's use and the majority of the land is designated to Hunters Hill Technology College (formerly Hunters Hill School). The gift also included the property known as Rosemary Cottage, a substantial detached house, which was disposed of on 26th February 1999 as it was no longer required for the fulfilment of the Trusts Objects.
- 4.2 The Trust is governed by a scheme dated 12th November 1997 which permits disposals and is registered Charity no. 1085296. The specific objects of the Cropwood Estate trust are wide ranging and are: the furtherance of any charitable purpose for the benefit of the inhabitants of the City of Birmingham including all or any of the following purposes (a) the provision and support of educational facilities (b) the provision and support of facilities for recreational and other leisure time occupation with the object of improving the conditions of life for the said inhabitants (c) the relief of the aged, impotent and poor (d) the relief of sickness.
- 4.3 On the disposal of Rosemary Cottage restrictive covenants were included to limit the land to a single private dwelling house with appropriate outbuildings only to prevent additional development. The current owners have sought and received planning permission for the conversion of the roof space above the detached garage to form a separate one bedroom residential unit. The owners have sought a partial release of the restrictive covenant to allow this and authority is requested to negotiate suitable terms for its release. Appropriate recompense will be due to the Cropwood Estate if the matter proceeds. It is proposed to negotiate those terms, take the additional value and allow the development. Any further development would still be subject to the continuing restrictive covenant and require a separate consent if be allowed.
- 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. The specific objects of the trust are simply to 'use of the premises as a public park and the activities likely to be allowed in the Lodge will comply.
- 4.5 **Trustee Powers**
A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds as amended by a scheme agreed with the Charity Commission.
- 4.6 **Trust Finances**
The Cropwood Estate Trust has a valid revenue source and options to convert assets from property to capital investments. The College is Local Authority managed and generally Education will cover any extraordinary costs created by the College land.
5. **Evaluation of alternative option:**
To do nothing is in fact an option. Consent to the works does not have to be given in this instance but it is considered appropriate and proportionate to allow the proposed development to proceed.

6. Reasons for Decision(s):

6.1 To secure the best terms for any disposal while remaining in compliance with the Trust Objects.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Charity Commission Scheme for the Cropwood Estate dated 12th November 1997
2. Disposal documentation for Rosemary Cottage dated 26th February 1999

List of Appendices accompanying this Report (if any):

1. Planning Consent for the Rosemary Cottage development