

BIRMINGHAM CITY COUNCIL – “COUNCIL AS TRUSTEE”

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	
Report of: Date of Decision:	Director of Property 17 December 2015	
SUBJECT:	WILLIAM WALTER HINDE FOR OPEN SPACE (REG. CHARITY NO.522893) – THE WHITE HOUSE, COFTON PARK – LEASEHOLD DISPOSAL OF PART	
Wards affected:	Northfield	

1. Purpose of report:

- 1.1 To respond to Members concerns regarding a disposal of trust assets in 1991.

2. Decision(s) recommended:

That Committee

- 2.1 notes and agrees the report.

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3.	Consultation
	Consultation should include those that have an interest in the decisions recommended
3.1	<u>Internal</u> N/a
3.2	<u>External</u> N/a
4.	Compliance Issues:
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 and actions proposed are required to be 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. Land at Cofton park is held for public open space.
4.2	<u>Financial Implications</u> (Will decisions be carried out within existing finance and resources?) No direct costs arise from this report. The capital receipt from the disposal in 1991 was small and was spent many years ago as part of the general expenditure on the Park. No records exist from then but as an example the accounts for 2014-15 showed a cost to Birmingham City Council of £139,638.22 compared to the available budget of £48,863.00 a technical loss of £90,775.22. The Park has little opportunity to develop income except the rent from the service tenancy on the remaining flat and occasional but infrequent profit on events.
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. Decisions made by the charity must be expedient in the interests of the charity at all times. The disposal of trust assets is an exceptional event and must be in line with appropriate professional advice.
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.

5. Relevant background/chronology of key events:

- 5.1 Cofton Park is the principal asset of the trust known as William Walter Hinde for Open Space (registered charity no. 522893) and measures approximately 130 acres of open space land. It was acquired on 9th November 1933 and registered as a charity on 29 October 1963.
- 5.2 The Park is comprised of land formerly known as Low Hill Farm and the premises now known as the White House was part of the original farm buildings on acquisition, became for some years the Refreshments Room once the Park was developed and may always have had at least one residential unit included within it but is now divided into two separate flats with no public functions incorporated into the building. The surrounding area is a depot and also site of the current sports changing rooms.
- 5.3 The ground floor flat is shown as having been disposed of and to respond to concerns raised by Members the principle of this disposal has been investigated as best as is possible with the information available 24 years after the event.
- 5.4 This was a disposal of a leasehold interest only. The only document available now is the lease. The lease gives no additional information as to the surrounding discussion or specific advice received however it does confirm that the disposal is the grant of a 125 year lease from 8th July 1991 and made specifically in response to an application made under the Housing Act 1985 Right To Buy legislation. The freehold interest has been retained by the City Council and the first floor flat continues to be directly rented by a retired employee.
- 5.5 It would appear that at the time there were a number of Right to Buy applications being processed on Parks properties though this is the only one known to be on trust land. The response to the Right To Buy application to proceed with a disposal was in line with legal advice at the time otherwise the matter could not have been legally completed by Legal Services. Policy on trust land and residential units thereon has for many years been tempered by concerns that occupiers could secure tenancies and the statutory right to buy and it is only recently that advice that such rights would not apply to trust land has been made by Legal Services.
- 5.6 Therefore while an application under the Right to Buy legislation on premises on trust land would not now be entertained it would have been considered by all involved in 1991 that a sale was as of right and that a disposal was unavoidable however undesirable.
- 5.7 A premium payment of £8740 for the lease of the ground floor flat was received along with a continuing rent of £10 per annum. The disposal price would have been subject to discounting in line with the statutory calculation under the Right to Buy applicable to the applicants number of years occupation. The capital receipt and rental would have been received by Parks and the monies used for the maintenance and enhancement of the Park. As financial records are only retained for six years it is not possible to confirm on how the monies were spent. However it is appropriate to note that the Parks service undertake all actions for the management and preservation of the park without call upon the Trust and average spend over the last five years has been £135k per annum and consistently far exceeds any income .

5.8.a 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 land in the William Walter Hinde for Open Space Trust is held as public open space.

5.8.b 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 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 these assets including disposal in the Trustee of Land and Appointment of Trustees Act 1996.

5.8.c. Charity Finances

Formal accounts are prepared for the Charity Commission returns where appropriate. The premium was treated as accumulated income and has been spend on maintaining the Park.

6. Evaluation of alternative option(s):

6.1 There is no alternative action identified.

7. Reasons for Decision(s):

7.1 To ensure the Members are fully advised of the historic facts and continue to safeguard the Trust's assets.

Date

Signatures

Chairman of the Trusts & Charities Committee

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Chief Officer

Director of Legal & Democratic Services

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List of Background Documents used to compile this Report:

1. Acquisition Deed dated 9th November 1933
2. Lease dated 8th July 1991.

List of Appendices accompanying this Report (if any):

1. Plan showing the location and extent of the lease granted.