

BIRMINGHAM CITY COUNCIL – “COUNCIL AS TRUSTEE”

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	
Report of:	Assistant Director Culture & Visitor Economy	
Date of Decision:	2 March 2016	
SUBJECT:	GRANT OF LEASE AT SAREHOLE MILL RECREATION GROUND	
Wards affected:	Hall Green	

1. Purpose of report:
<p>1.1 The renewal of the lease of Sarehole Mill, held in trust as part of Sarehole Mill Recreation Ground (registered charity no. 254995) to Birmingham Museums Trust (BMT) as part of the renewal of the contract to operate the Museums and Heritage Service as to be approved by Birmingham City Council at their Cabinet meeting on 22 March 2016.</p>

2. Decision(s) recommended:
That the Committee:-
<p>2.1 Notes the report to Cabinet and the proposed renewal of the contract and leases to Birmingham Museums Trust</p> <p>2.2 Agrees that once Cabinet having approved the above that a recommendation be made to the next available meeting of the Full Council as trustee that the grant of the lease of Sarehole Mill to Birmingham Museums Trust be approved on terms to be agreed by the Director of Property, for up to a 25 year term in line with the proposals set out in the Cabinet Report.</p> <p>2.3 To seek any further approval necessary of the Charity Commission or descendants of the original transferors of the land, or other bodies as appropriate and to agree to make any applications necessary for appropriate powers of disposal.</p> <p>2.4 Authorises the City Solicitor 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. .</p> <p>2.5 Authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation for the operation of the land and buildings at Sarehole Mill Recreation Ground by Birmingham Museums Trust, including this lease, to give effect to the above decisions.</p>

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3.	Consultation
3.1	<p>Consultation should include those that have an interest in the decisions recommended.</p> <p><u>Internal</u></p> <p>On 22nd March 2016 the report of Strategic Director of Major Projects on the 'Birmingham Museums Trust Contract 2016-21 and Lease Arrangements' will be presented for approval at Cabinet after much consultation and set out the principle for the Museum sites to continue to be operated by the BMT and for the leasing out of all current Museum buildings. Sarehole Mill is part of the Sarehole Mill Recreation Ground held in trust and it is appropriate to resolve that the continuation of this site being leased on the same main terms as the other community museums.</p>
3.2	<p><u>External</u></p> <p>No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the various Charities Acts.</p>
4.	Compliance Issues:
4.1	<p><u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>The objects/purposes of the Council's charitable trusts all have a commonality and principally are held for the benefit of the citizens of Birmingham. Actions proposed are required to be in the best interests of the trust and are intended to preserve the trust estate for the future while consistent with the Council's Policies, Plans and Strategies. Land at Sarehole Mill Recreation Ground is held for public open space.</p> <p>The Mill building is Grade 2 Listed and existed long before the park was created or the gift forming the trusteeship was given. It remains an integral part of the park and the locality. It is appropriate that the premises remain in active use and where the Trust cannot run these directly they need to be operated in partnership or leased out. BMT has been operating the Mill successfully since 2011 and with the renewal of the contract it is appropriate to consider the renewal of the lease subject to the relevant permissions from the Charity Commission. The renewal would assist in maintaining a high quality museum offer to the residents of Birmingham while hoping to maximise opportunities for income generation. The proposal will not result in material changes on site and will continue to comply with the objects of the charity.</p>
4.2	<p><u>Financial Implications</u> (Will decisions be carried out within existing finance and resources?)</p> <p>N/a. The operational costs for the Mill and pond will be covered by the BMT and continue to absolve the Sarehole Mill Recreation Ground Trust from financial involvement. The lease will be granted on terms that will reflect best value and satisfy matters for this under s36 of the Charities Act 1993 though in practice it is anticipated that the lease will be granted on a peppercorn rent reflecting the considerable costs of maintaining and operating the Mill as a visitor attraction. Funding support will still be given to BMT by the City Council Museums & Heritage Service.</p>
4.3	<p><u>Legal Implications</u></p> <p>Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees in making decisions 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.</p>

The City Council is Sole Corporate Trustee of a number of charitable trusts and has delegated day to day management decisions in respect of these trusts to the Trusts and Charities Committee with decisions on other matters being approved at meetings of the Council as Trustee. Proposals for the management of land in trust or of services thereon require robust procedures to safeguard the Trust and the public using the parkland and buildings to comply with charity law. Charitable activity is further regulated by the Charity Commission. Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 allows the City Council powers to amend services and meets the Council's regulations and standing orders.

4.4 Public Sector Equality Duty (see separate guidance note)

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 an Equality Impact Assessment has been undertaken for the Cabinet report. No decision on a new lease will take place until the 'Council as trustee' have considered the matter further.

5. Relevant background/chronology of key events:

- 5.1 The land was gifted to the City under the will of A. H. Foster proved at Birmingham on 3rd January 1929. An order of the Charity Commission was dated 25th April 1946 and a scheme of powers was resolved on 28 May 1970. The charitable objects require the land to be used principally as open space for botanical garden, park, recreation ground or other similar purposes for the benefit of the City of Birmingham as the Lord mayor Aldermen and Citizens may decide. The charitable objects fit into the Charity Commissions classifications for arts/culture/heritage/science and amateur sport. Sarehole Mill is one of the few working mills in Birmingham or the surrounding area and has continued to be linked to the Lord of the Rings stories by J. R. R. Tolkien.
- 5.2 On 11 July 2011 the report of the Strategic Director of Environment and Culture on the Birmingham Museums Project Business Plan to deliver the museums and heritage service was approved at Cabinet Committee Property. The BMT is also a registered charity (no. 1147014). The company is headed by Trustees with the sole member of the company is the Birmingham City Council. The substantial continued involvement of the City Council gives additional direction and control particularly at financial level but also means that it is a transaction with a connected party under the Charity Act 1993 and requires an order from the Charity Commission for final approval. It is anticipated that the Birmingham Museums Trust new company be granted a lease for 25 years at a peppercorn rent and contracted out of the security provisions of the Landlord and Tenant Act 1954 Part 2. The contract for the operation of the Museums Service is for five years only reflecting the length of term over which the Council can confirm funding for the service and accordingly options to break the lease will be included should for any reason the main contract be brought to an end by either party.
- 5.3 BMT will continue to operate this as an attraction open to the public on the same terms as existing being responsible for all day to day matters while the City Council will continue to be liable for major renovation costs while working together to secure external capital funding.
- 5.4 The granting of the leases and the Service Agreement with appropriate Key Performance Indicators will provide a suitable mechanism for the City Council to be assured of a well-Run Museums service in future years and that robust procedures to adequately Safeguard the Committee and the public using the adjoining park land, and to comply with charity law, remain in place.

5.5.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 Sarehole Mill Recreation Ground 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 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 normally exist for the Trustees to make decisions on the future of the assets including disposal in the Trustee of Land and Appointment of Trustees Act 1996. However disposals to a connected party require specific Charity Commission consent.

5.8.c. Charity Finances

Formal accounts are required to be prepared for the Charity Commission returns where appropriate although income is very low and far exceeded by general maintenance obligations for the parkland with all duties undertaken by BCC Parks Service.

6. Evaluation of alternative option(s):

- 6.1 Do nothing. This is not an appropriate option as the Mill and pond need to be in the management of an appropriately funded person and is considered most suitably to be used best as a facility open to the public as a working mill. The Council as Trustee must be able to demonstrate that measures for the effective management of land in its jurisdiction are in place and the formation of an appropriate lease will ensure compliance.
- 6.2 Release to the general market. This is possible but not likely desirable as the Mill is one of eight main museums in the city and retaining them all under single management is appropriate to ensure a co-ordinated and strategic approach to leisure facility provision in Birmingham.

7. Reasons for Decision(s):

- 7.1 To facilitate the on-going modernisation of the Museums & Heritage Services by permitting the grant of a lease to the BMT and to allow further necessary approvals to be put in place for this.

Signatures

Date

Chairman of the Trusts & Charities Committee

Chief Officer

Assistant Director Culture & Visitor Economy

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List of Background Documents used to compile this Report:	
1. Acquisition Deed dated 3 rd January 1929 with scheme of powers dated 28 May 1970	
2. Cabinet report dated 22 nd March 2016 Birmingham Museums Trust Contract 2016-21 and Lease Agreements	
List of Appendices accompanying this Report (if any):	
1. Plan showing the location and extent of the lease to be granted.	