

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of: Date of Decision:	Strategic Director of Place 19 July 2017
SUBJECT:	SMALL HEATH PARK – LEASE OF SMALL HEATH PARK LODGE
Wards affected:	South Yardley

1. Purpose of report:

To seek approval to obtain revised management powers including powers of disposal for the benefit of Small Heath Park and progress a disposal of the Lodge by way of a lease.

2. Decisions recommended:

That the Committee

2.1 notes

- the Small Heath Park Lodge has been unoccupied for many years and is in need of substantial repair before it could be brought into use but that there is demand for it to be made available for community purposes by parties who might secure such funds
- notes also that any release of land or property on trust land would be subject to formal marketing and a tenant selection process and any occupation would need to be regularised by a formal lease but before the grant could be made new powers would need to be available to the Trust.
- notes further that, subject to appropriate valuation advice, the expectation is that the capital required to bring the premises back into use will likely result in the grant of a lease at a peppercorn rent only.

2.2 authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for new powers for the better management of the trust assets including powers of disposal

2.3 authorises, if necessary, the making of any applications including a Deed of Release from the giftor's representatives as landlord seeking to remove or amend the restrictive covenant limiting the use of the premises.

2.4 authorises, subject to appropriate marketing and valuation advice, the disposal by way of an underlease of up to 35 years from an early date to be agreed, of the premises formerly allocated to the Lodge and gardens and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval

2.5 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 and negotiate the terms of any disposal

2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease including the above applications to give effect to the recommendations and to apprise the Committee of the results of the applications and consultation.

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3. Compliance:

3.1 Consultations:

Internal

Officers in Parks and Nature Conservation have no need of the premises and would release an appropriate area of the former gardens to support any letting. Local Members have also signalled support to have the Lodge being brought back into use.

External

The opportunity to lease the lodge will be made available generally to comply with all requirements for consultation, and of best value and procurement provisions in line with 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 with final decisions on a disposal of land or assets being made by Council as Trustee. 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. As trustee the City Council has a statutory duty to ensure the Trust is properly managed at all times and seeks to preserve and properly manage its assets. The use of the lodge for purposes that are not consistent with the aims of the Charity would contravene the terms of the gift. The use of the Lodge undocumented would see the trust acting in a non-compliant manner. Until appropriate modern management powers are available no lettings can take place.

The refurbishment of the Lodge will safeguard the premises, remove an eyesore and enhance the provision of services to the local community which services assist the trust to meet its objects around recreational use of the Park.

From the visit of Queen Victoria in 1887 the Park was known as Victoria Park but it is understood with the amalgamation of several local authorities in 1911 several Victoria Parks existed (including Handsworth Park) and the name was later changed to Small Heath Park.

The land and property was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any modern management powers for the Trust and the Trust will need to make applications to the Charity Commission for appropriate powers including powers of disposal of property to grant the proposed lease. 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.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. All future running costs for the premises will be covered by any tenant or while the property remains vacant the Parks Service. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue, if any, ring-fenced to the trust. 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 The whole of Small Heath Park is held on the remainder of a 900 year lease from 29th September 1876 with the freehold being held by the beneficiaries of the estate of Miss Louisa A Rylands. It was acquired under powers in the Birmingham Parks Act 1854 but is treated as a gift and is held as a charitable trust. This is not a registered charity. The terms of the gift require the Park to be used for 'providing for the inhabitants of the City, parks and other places of healthful and pleasurable resort'. The application for a scheme will seek to extend the range of activities to include those necessary for the successful operation of a community facility at the lodge.
- 4.2 The lodge was used as a park keeper's residence until the mid-1980s after which it was used briefly as office accommodation for Parks officers but has since been vacant. It was damaged by fire and boarded up until the City Council undertook a partial refurbishment to replace the structures and roof and to ensure the premises were secured and wind and watertight. Since then there has been no further incident but the property is still estimated to require in excess of £150,000 to refurbish fully. Opportunities to let the property are limited as there is no vehicular access except over a long route through the park.
- 4.3 Interest has been expressed by several groups to make use of the lodge for office/meeting room and cafe accommodation. If the application to the Charity Commission is successful in granting general powers of disposal it may be in the best interests of the Charity to lease it in the open market. Conversely it may be in the best interests of the Charity to lease it for community purposes as the preferred option of local people.
- 4.4 On 18th January 2012 a report was brought to Trusts & Charities Committee seeking to make this same application. At the time Members first required several potential breaches to be remedied by the Parks service. Those breaches have been addressed and it is now appropriate to resubmit a report to secure appropriate powers.
- 4.5 As the Park is held leasehold other applications may be required for landlords consent.
- 4.6 **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.
- 4.7 **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. All decisions will be mindful of the original intention of the documents however routes exist for their amendment through Part 7 Charities Act 2011 or an Order or Scheme from the Charity Commission.
- 4.8 **Trust Finances**
The trust has no revenue or capital investments. The Park is managed and maintained by Birmingham City Council Parks and Nature Conservation but the Lodge though supported over the years is not in good condition. The sole asset of the trust is the Park.
5. **Evaluation of alternative option:**
This report seeks approval to make applications to amend the restrictive covenant and gain appropriate powers for future management or disposal of the property. To do nothing is not an appropriate option as the asset is in danger of being lost and its preservation is most ably achieved by reuse and the grant of an appropriate lease.

6. Reasons for Decision(s):

- 6.1 To better safeguard the Trust's assets overall, retaining public services leading to the healthful recreation of the citizens of Birmingham within this public park.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 29th September 1876

List of Appendices accompanying this Report (if any):

1. Plan of the Park and Lodge