

# Birmingham City Council

## Trusts and Charities Committee

15/01/2024



**Subject:** Highbury Trust – Update on progress  
**Report of:** Assistant Director of Corporate Landlord  
**Report author:** Nigel Oliver

Does the report contain confidential or exempt information?  Yes  No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:

### 1 Executive Summary

- 1.1 To update the Committee on progress on matters affecting the Highbury Estate and revenue account.

### 2 Recommendation(s)

That the Committee:

- 2.1 Notes that the changes to the management of the Highbury Estate agreed at previous meetings and set out in Appendix 1 continue to be progressed and it is appropriate to update the Committee.
- 2.2 Approves that the external advisors' legal fees, costs and disbursements in resolving those changes will now be met from the funds of the Highbury Estate which will be enhanced in due course by the capital receipts obtained from the agreed property disposals.
- 2.3 Authorises that the Chief Legal Officer and City Solicitor re-engage with the external advisors and prepare, negotiate, execute, seal and complete all necessary documentation and undertake any required consultation and advertisements or other notices to give effect to the above decisions.

### **3 Background**

- 3.1 The Highbury Estate was gifted by the heirs of the Right Honourable Joseph Chamberlain on 31<sup>st</sup> March 1932 and is held in trust. It is a Registered Charity no 1039194. The Estate comprises approximately 13.03 hectares (32.2 acres) of park land including Highbury hall and Chamberlain House and three lodges. It now accommodates part of Uffculme Special School in Chamberlain House and at 92 Queensbridge Road the Four Seasons Gardeners, an Adult Services enterprise.
- 3.2 On 12<sup>th</sup> June 2023 a report was presented to Committee on matters affecting the Highbury Estate and to alert Members that a follow up report to Council as trustee would progress as soon as possible thereafter. The report to Council as trustee was discussed and agreed at its meeting on 11<sup>th</sup> July 2023 and the resolutions are set out in Appendix 1.
- 3.3 The resolutions agreed at the meeting were acted on, external solicitors and agents appointed and documents progressed particularly the Agreement for Lease between BCC, Highbury Estate Trust and Chamberlain Highbury Trust (CHT). It was proposed to bring the update report referenced in resolution no.6 to a meeting of Council as trustee once the terms and conditions of the principal documents between the trust and CHT were agreed. However, at the request of CHT, to assist the progress of their bid to the National Lottery Heritage Fund (NLHF) a report was aimed at the Council as trustee meeting in November 2023. With the service of the section 114 notice on BCC and the appointment of the Commissioners in agreement with the Commissioners this was deferred pending further discussions on the City Council's proposed match funding of the capital bid. The Chairman provided an update to Committee Members on this in his email of 15<sup>th</sup> November 2023 with an extract of the Commissioners statement.
- 3.4 While those matters may still take some time to resolve it is appropriate to finalise the proposed documentation between the Trust and CHT principally the Agreement for Lease and related documentation regarding their occupation of the Highbury Estate and to better assist the Highbury Estate trust's applications to the Charity Commission. Works on this were suspended in December but it is now proposed to re-engage solicitors to agree those documents.

### **4 Options considered and Recommended Proposal**

- 4.1 The course for resolving the governance issues identified at Highbury by the Charity Commission has been agreed for several years and Chamberlain Highbury Trust (CHT), Registered Charity no 1169845 has been set in place to best resolve these and to manage the Estate and seek external grants to enable the refurbishment of Highbury. There is no reason for change at this point as their presence and activities already assists the Highbury Trust and they remain hopeful the bid to the NLHF will be successful.

- 4.2 There are clear benefits to the trust from finalising the documents with CHT and advancing applications to the Charity Commission to effect these and other disposals which have already been fully approved in advance.
- 4.3 To do nothing is not an option since it would leave BCC and the Trust exposed to reputational damage and possible action by the Charity Commission.

## **5 Legal Implications**

- 5.1 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. Trustees can also rely on the provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power for the trustees to manage the assets of the Trust as absolute owner. Actions proposed by the Trustees are required to be in the best interests of the trust and are intended to safeguard the trust estate for the future.
- 5.2 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 at Highbury 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 Objects of the Charity are necessarily limited but sufficiently enable the future management of the estate "for the general benefit of the Citizens of Birmingham".
- 5.3 The Highbury Trust holds the freehold interest of the land in trust as Sole Trustee and is empowered to undertake actions to properly manage the assets of the Trust including the making of awards to support the bids for a refurbishment of Highbury. Chamberlain Highbury Trust have been appointed to act as managing trustees for the Highbury Estate.

## **6 Financial Implications**

- 6.1 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 and as Trustees to ensure that actions are undertaken within financial resources. Formal accounts are required to be prepared for the Charity Commission returns where appropriate. The Highbury Trust has a revenue stream principally from the letting

of Highbury to BCC Civic Catering for the continuing use of the property as a wedding/conference centre and interest earned on balances.

- 6.2 The previous activities and bids by CHT to the NLHF for funds for the refurbishment of Highbury have been supported by the trustees with grants from Highbury Trust funds. That Chamberlain Highbury Trust are continuing their operations on the Estate and advancing their bid to the NLHF for funds for the refurbishment of Highbury is in line with the longer term ambitions of the trustees to secure the restoration of Highbury.
- 6.3 To date works by the external solicitors have been met by BCC funds but the Commissioners have now clarified that no additional BCC support is available and generally future trust activity will need to be funded by the individual trust concerned. As appropriate, funds to progress the approved matters on the Highbury Estate will be drawn from the Highbury Estate revenue account, and if necessary to fund the costs of these transactions, against future receipts from any disposals.
- 6.4 The main immediate cost will be the fees of the external solicitors, who it is proposed to re-engage with immediate effect. It is estimated costs for the remaining work will be approximately £30k.
- 6.5 Officers supporting the Committee and general trust work do not currently charge time to the trust accounts. It is not proposed to change this arrangement at this time but where these arise in future they will need to be met from trust resources not BCC resources.

## **7 Public Sector Equality Duty**

- 7.1 The statutory functions discharged by the trustees through the Council as Trustee and the Trusts & Charities Committee 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. Public consultation is not required and Member consultation is not usually undertaken for Trust matters at this stage but the Leader, Leader of the Opposition Parties, local Members and others will be alerted to the report.

## **8 Background Papers**

- 8.1 The conveyance dated 30/03/1932.

## **9 Appendices**

- 9.1 Appendix 1 - Resolutions Council as trustee meeting on 11<sup>th</sup> July 2023

The meeting of - Full Council sitting as 'Council as Trustee' on 11<sup>th</sup> July 2023 resolved :

1. Notes that the transfer of property proposed in this report by the Council as Trustee to CHT and BCC raises potential conflicts of interests and these conflicts have and will continue be mitigated by: engaging external legal advisors to advise the Council as Trustee on the proposed disposals, seeking Charity Commission's prior approval and consent to any actions taken under this report, obtaining independent external valuations on all Trust assets affected, and by excluding Council Members who are connected to CHT from debating or voting on this report.
2. Authorises an application made to the Charity Commission to obtain either an Order for the disposal of Chamberlain House to Birmingham City Council free of any ongoing charitable trusts, and to apply the net proceeds of sale of any such disposal as directed by the Charity Commission by way of Scheme (if required) or otherwise applied in furtherance of Highbury Trust objects.
3. Authorises the City Solicitor (or their delegate) to negotiate and settle any documents to give effect to transfer of Chamberlain House to Birmingham City Council by way of a Charity Commission Order.
4. Agrees in principle the grant of a 125-year lease at a peppercorn rent to the Chamberlain Highbury Trust registered charity number 1169845 (CHT) of Highbury Hall and adjoining trust land more particularly delineated in red on the plan attached at **Appendix A** subject to compliance with charity law and obtaining the Charity Commission's prior consent by way of Order.
5. Agrees that the net proceeds of sale raised from the disposal of surplus Trust property, namely 98 Queensbridge Road at commercial market valuation and in accordance with Charities Act 2011, shall accrue to Highbury Trust.
6. Notes that a further report on progress will be presented to Full Council in approximately 6 months to update Full Council as Trustee on progress achieved and further decisions of Full Council as required.
7. Authorises the City Solicitor and Monitoring Officer be authorised to continue to seek external professional legal advice, independent property valuations, negotiate lease terms with CHT and make applications to the Charity Commission for the purpose of progressing and implementing the above recommendations.