

BIRMINGHAM CITY COUNCIL – “COUNCIL AS TRUSTEE”

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	
Report of: Date of Decision:	Director of Property 20 July 2016	
SUBJECT:	SURRENDER AND RENEWAL OF LEASE AT 187 HARBORNE LANE (SELLY OAK PARK (REGISTERED CHARITY NO.522877))	
Wards affected:	Selly Oak	

1. Purpose of report:
1.1 To consider the surrender and renewal of the lease of 187 Harborne Lane, which is part of Selly Oak Park, held in trust.

2. Decision(s) recommended:
That Committee:
2.1 approves the proposal to accept the surrender of the existing lease and grant two new leases on the same land, each for 125 years.
2.2 approves the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust, including change of use to permit uses as described in C2 and C2A of the Town and Country Planning (Use Classes) including student accommodation.
2.3 authorises the recommendations of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval.
2.4 authorises any further approval necessary is sought 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.
2.5 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.
2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

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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> Officers in the Parks Service have been consulted and have raised no objections.</p>
3.2	<p><u>External</u> 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> 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.</p>
4.2	<p><u>Financial Implications</u> (Will decisions be carried out within existing finance and resources?) The property is already leased long term but has been vacant for several years pending a suitable new use. There will be no direct cost in proceeding with the proposed new lease as the tenant will pay all landlords legal and surveyors costs. The substantial increase in rental income will be of general benefit.</p>
4.3	<p><u>Legal Implications</u> 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. All valuation advice conforms to the requirements in Part 7 Charities Act 2011 for the disposition of trust land. The grant of a long lease is a disposal for these purposes.</p> <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.</p>
4.4	<p><u>Public Sector Equality Duty (see separate guidance note)</u> 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.</p>

5. Relevant background/chronology of key events:

- 5.1 Selly Oak Park is formed from a number of acquisitions and is mostly held in trust as Registered Charity no.522877 k/a Public Park and Pleasure Ground Birmingham Selly Oak Park registered 01 October 1963. The City acquired the specific part of the Park when the land was gifted by William John, William W and Robert L Gibbins on 31/12/1919. The Gibbins family were a very prominent family in the area at the time. No. 187 Harborne Lane is the site of the former park keeper's lodge which was demolished in the 1980's. The trust deed contained a restrictive covenant limiting the use of the land generally to recreational purposes (public open space). In 1988, a Deed of Release was obtained to relax the covenants on this section permitting the use of the building to allow "care for old people." A 99 year lease was then granted and the care home property erected.
- 5.2 In May 2007, the nursing home closed as a result of changes in legislation making many care homes nationally non-compliant and financially unviable.
- 5.3 In 2013 the lease was assigned and the new tenant sought landlords consent to extend the term of the existing lease and to a change of use from 'care for old people' to uses as described in C2 and C2A of the Town and Country Planning (Use Classes) Order 1987 (as amended) including student accommodation. There is substantial demand for accommodation for employees of the two hospitals in the vicinity as well as general demand from university students. Planning consent to convert the existing building in to a 21 bed student accommodation block and a new stand-alone accommodation block for 9 student apartments has been granted. The conversion of the existing building has been undertaken and is fully occupied.
- 5.4 Negotiations to surrender and re-grant the lease have been on-going for some time and the main terms have now been agreed. The new terms will give the trust a greatly increased annual income and the ability to review the rent to market value every 7 years as opposed to the current lease which only doubles the passing rent every 25 years. Plans of the existing and proposed leases attached as Appendix 1 and 2. It is anticipated that a further Deed of Release will now be required in addition to other consents for the disposal.
- 5.5 **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 area leased is separated from the main park by the line of the former Lapal Canal though still subject to charitable objects generally. There was also a potential requirement of land within the lease to assist the restoration of the Lapal Canal by the Lapal Canal Trust in reconstructing a turning circle on the bridge. However most recent plans for the canal development no longer include the leased land and so terms have recently been agreed which include the full area of the existing lease.
- 5.6 **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 also 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.
- 5.7 **Charity Finances**
Formal accounts are required to be prepared for the Charity Commission returns where appropriate although income at Selly Oak Park is below the threshold 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. There is not a 'do nothing' option. Action must be taken as the Lessee is legitimately in occupation but currently operating a business without full consent of the landlord, and the passing rent is minimal.
6.2	Take legal action against the Tenant to stop using the building as student accommodation. This would incur legal fees and would prevent the development of land and increased income to the Council. It would also deny an opportunity to provide much needed affordable accommodation near to the hospitals when there appear to be very few other options for the site except standard residential development.
7.	Reasons for Decision(s):
7.1	To safeguard the Trust's assets, secure legitimate occupation and maximise income from land held by the Trust while bringing vacant buildings back into beneficial use.

Signatures	Date
Chairman of the Trusts & Charities Committee
Chief Officer	
Director of Property

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	
List of Appendices accompanying this Report (if any):	
1. Plan showing the location and extent of existing lease	
2. Plan showing location and extent of two new leases to be granted.	