

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>Service Director - Sports, Events, Open Spaces and Well-being</b>
<b>Date of Decision:</b>	<b>20<sup>th</sup> September 2017</b>
<b>SUBJECT:</b>	<b>CHAMBERLAIN GARDENS PARK LEGACY PROJECT PHASE 1</b>
<b>Wards affected:</b>	<b>Ladywood</b>

**1. Purpose of report:**

To seek approval to reinstate the Trust land formerly occupied by Beale House and integrate this into the wider park to be improved under proposals set out in the Chamberlain Gardens Landscape Masterplan Proposals appended.

**2. Decisions recommended:**

That the Committee:

- 2.1 notes the content of the Chamberlain Gardens Historic Landscape Report
- 2.2 notes the proposals to improve the layout and facilities provided at Chamberlain Gardens Park as set out in the Landscape Masterplan Proposals
- 2.3 approves the implementation of the Phase 1 works to reinstate and integrate the Trust land formerly occupied by Beale House into the park requirements and undertake other works on the Trust land
- 2.4 authorises the City Solicitor to negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

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### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

The Park is managed on a day to day basis by Place Directorate and officers in Birmingham City Council Parks Service fully support the proposals developed by the Landscape Practice Group. Ward Members have been consulted and fully support the proposals which have developed over some years in response to and as a consequence of the adjoining Housing development, now complete.

##### External

Public consultation regarding the proposals for the trust land is not required but may be undertaken. The proposals for the park were shared with the Friends of the Park and Councillor Hartley at a meeting on 3rd November 2016, where it was agreed that the Historic Landscape Report should be commissioned and a master plan for the Park incorporating the ideas drawn from the public consultation since November 2014 be developed. The proposals have now been accepted by stakeholders.

#### **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. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust document as amended by any Scheme approved by the Charity Commission.

The Chamberlain Gardens Trust holds the freehold interest of part of the Park in trust as Sole Trustee and is responsible for ensuring the Trust is managed in accordance with the governing document and in accordance with charity law and relevant Charity Commission guidance.

The terms of the Trust are that the land is to be used for the purposes of a public park for the recreation of persons in the City of Birmingham and the general public together for the purposes of a playground or pleasure ground. In addition, the original Conveyance dated the 16th May 1922, contains a positive covenant with the transferor that the City would adequately fence the area and provide all necessary planting of trees and shrubs before the area was to be opened to the public for the purposes of the park.

The Trust is not a registered charity nor does the governing document provide any direct powers for the future management of the trust land. However trustees are able to rely on the provisions of the Trusts of Land and Appointment of Trustee Act 1996 for sufficient powers to allow the proposed works to proceed.

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

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects of the trust and charity law. The Trustees must act with prudence and must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. There are no assets to this trust except the land held for use as a public park. Principal revenue costs for the trust Estate are covered by the Birmingham City Council Parks Service. The proposed reinstatement works will be paid for by Birmingham City Council from receipts from the disposal of other land for residential development. The demolition of Beale House removed an encroachment onto part of the Trust land and enables its reinstatement as part of the wider Park once again.

#### **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.

<b>4.</b>	<b>Relevant background/chronology of key events:</b>
4.1	Chamberlain Gardens Park was formed by a gift of land of 1.922 hectares on the corner of Monument Road and Ladypool Road from the Hon. Mrs Rachel Anstruther Gough Calthorpe on 16 <sup>th</sup> May 1922, but much further expanded by the purchase of land from Brigadier Richard H A Gough Calthorpe on 9 <sup>th</sup> November 1956 and the demolition of the Victorian houses lining the Monument Road and Beaufort Road to form a municipal housing estate. Only the 1922 acquisition created land held in trust.
4.2	During that 1960's construction part of the residential block known as Beale House occupied without any known express consent part of the trust land. Officers in Birmingham City Council Place (Housing Development) committed to correcting this as part of their wider improvement plan for the area by reinstating the land as soon as the residential units could be relocated and Beale House demolished. To assist the redevelopment in the area that part of trust land formerly used by Beale House was agreed, at Committee on 4 <sup>th</sup> March 2015, to be used as a contractor's car park for a fee of £7,400. The fee has been paid in full.
4.3	The general area has undergone several stages of improvement over recent years. Following a 'planning for real' style consultation on 2nd November 2013 and subsequent public consultation, a masterplan for the improvement of the park was developed. In June 2016 a historic landscape report was commissioned by the Landscape Practice Group on behalf of the Friends of Chamberlain Gardens Park to investigate the heritage of the park in preparation for developing the legacy project to create a self-contained neighbourhood park that reflects Ladywood's heritage.
4.4	This report was completed on 20 <sup>th</sup> July 2017 and resources are available to develop and deliver an initial phase of works in accordance with the costed masterplan. These works will include realignment of footpaths to link the Monument Road development with the park, the restoration of the pagoda and the laying out of a community orchard on the land formerly occupied by Beale House. Funding in the sum of £164,246 has been assembled from various sources including a contribution from the Monument Road BMHT housing development capital budget, the Monument Road housing capital receipt and a rental charge to Carillion plc for the use of part of Chamberlain Gardens Park as a compound site for the Ladywood Towers Refurbishment Project. The improvement works will be implemented throughout the park, including land held in trust. (See Appendix 2). It is intended that the works will commence on site in January 2018 and be completed by the end of April 2018.
4.4	<b>Aims and Objectives of the Trust</b> 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. The terms of the Trust are that the land is to be used for the purposes of a public park for the recreation of persons in the City of Birmingham and the general public together for the purposes of a playground or pleasure ground. In addition, the original conveyance dated the 16th May 1922, contains a covenant that the City would adequately fence the area and provide all necessary planting of trees and shrubs before the area was to be opened to the public for the purposes of the park.
4.5	<b>Trustee Powers</b> A trust's constitution is set out within the executed Trust Deed for each property which for Chamberlain Gardens is the acquisition deed dated 16th May 1922. There has been no subsequent amendment by any scheme agreed with the Charity Commission.
4.6	<b>Trust Finances</b> The trust is not required to fund the proposed works. The land is open parkland with no other assets nor revenue stream. The fee received as income to the trust for the car park hire at Beale House is a one-off opportunity only.
<b>5.</b>	<b>Evaluation of alternative option:</b> To do nothing is not an option. The trustees consent to works on the Trust land does not have to be given in this instance but the encroachment of Beale House on part of the Trust land is required to be remedied and its reinstatement to public park is essential. It is considered appropriate to allow the proposed development to proceed.

**6. Reasons for Decision(s):**

6.1 To ensure future compliance with the Trust Objects and to secure the land is fully available for public park users.

**Signatures:**

Chief Officer(s): .....

Dated: .....

**List of Background Documents used to compile this Report:**

1. Deed of Conveyance 16th May 1922
2. Report under Chairman's Action dated 23rd January 2015 and as reported to Committee on 4th March 2015

**List of Appendices accompanying this Report :**

1. Historic Landscape Report March 2017
2. Chamberlain Gardens Landscape Masterplan and Phase 1 Boundary
3. Plan showing extent of Trust land in Chamberlain Gardens