

Birmingham City Council

Council as Trustee

15 September 2020



Subject: A Multiple Report on Property Matters for Decision by Council as Trustee

Report of: Trust and Charities Committee

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 seek formal approval from Council as Trustee to the Motions proposed for each of the matters set out below which after consideration at earlier Trust and Charities Committee meetings are recommended to proceed.

2 Recommendations

- 2.1 That Full Council sitting as 'Council as Trustee':

A. Bilberry Hill Centre – application for powers of disposal

- i) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and, if appropriate, an Order to permit a disposal to a 'connected person'.

B. Bartley Green Library – application for powers of disposal

- i) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal including the disposal by way of a lease for up to 30 years.
- ii) from an early date to be agreed, the grant of a tenancy of up to three years to the 'Bartley Green Library Hub', a local community organisation, who will assist in the operation of the Library

C. Stirchley Library – application for powers of disposal

- i) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal including the disposal by way of a lease for up to 30 years.
- ii) from an early date to be agreed, the grant of a tenancy of up to three years to the Stirchley Art Room CIC, a local community organisation, who will assist in the operation of the Library

D. Calthorpe Park – application for powers of disposal

- i) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and if appropriate an Order to permit a disposal to a 'connected person'
- ii) authorises the disposal by way of a lease for up to 30 years from an early date to be agreed, of the land currently allocated to the Service being granted to a suitable community organisation

E. Sarehole Mill Recreation Ground - lease of Sarehole Mill to Birmingham Museum Trust

- i) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal to enable the agreement to the terms for the completion of an Agreement for Lease and subsequently the grant of a lease for 25 years of the Mill premises to Birmingham Museums Trust

and

that the Assistant Director of Property be authorised to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of property and to negotiate and agree the terms of all agreements on behalf of the Trusts provided that appropriate restrictions are included in the disposal terms to properly safeguard the individual Trust

and

that the City Solicitor and Monitoring Officer be authorised to prepare, negotiate, execute, seal and complete all necessary documentation, including the making of applications to the Charity Commission for any purposes required to give effect to the above decisions and also to place any formal advertisements required under either s123 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land, manage any appropriate consultation stages and to appraise the Trusts and Charities Committee of the results of that consultation.

3 Background

Governance arrangements

- 3.1 The City Council is Sole Corporate Trustee for a number of charitable trusts. Whereas day-to-day management decisions are delegated to the Trusts and Charities Committee only Full Council sitting as “Council as Trustee” can sanction disposals or major changes on trust land. Disposals include sales, the grant of leases, licences, easements and wayleaves and other arrangements for the use of trust land and property.
- 3.2 Each charitable trust is governed by the deed under which it was established, and/or by a Charity Commission Scheme or Order where applicable. These documents will usually set out Trustees powers, as well as the objects or purposes for which the charitable trust was created.
- 3.3 Generally, a disposal of charitable land whether by sale or lease etc. can only occur where the Trustees have either an express power of disposal within the Deed and/or Charity Commission Scheme, or can rely on an implied power under the Trusts of Land and Appointment of Trustees Act 1996 (the “1996 Act”). In some cases trust deeds do not provide a power of disposal and it is not possible to rely on the provisions of the 1996 Act. In those circumstances, the Trustee will need to make application to the Charity Commission for the grant of a Scheme of new management powers or an Order for the specific action. The Commission would only provide a Scheme or Order, if the Trustee can clearly demonstrate that the decision proposed is expedient in the interests of the Trust.
- 3.4 It is a requirement of the Charities Act 2011 that any charitable trust must carefully consider the method of disposal and achieve best value, although there are some statutory exceptions to this requirement when dealing with other charities. Where the Trusts and Charities Committee are recommending a sale of trust property, to ensure compliance with the Charities Act 2011, it is currently most likely that the disposal will proceed by way of auction subject to a suitable reserve being set but other methods will be considered. Properties leased out will generally be advertised to the open market to ensure best value, again in compliance with the Charities Act 2011.

4 Matters to be Determined

A. Bilberry Hill Centre – application for powers of disposal

- 4.1 The Bilberry Hill Centre premises at Rose Hill adjoining the Lickey Hills Country Park had been leased out for youth activities since 1970 but is now vacant. The premises are not in good condition.
- 4.2 It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so in this instance will require that the premises are relet or disposed of.

- 4.3 The land and premises forming the Centre was acquired in three parts two of which are held in trust. Neither document include powers for the trust to let or otherwise dispose of the premises. It is necessary to seek a Scheme or Order from the Charity Commission to obtain appropriate management powers for the trust including a power of disposal. Any receipt from any disposal will accrue to the trust account. Other applications may need to be made to remove or amend the restrictive covenant limiting the premises to recreational uses only.
- 4.4 At its meeting on 13th November 2019 the Trusts and Charities Committee confirmed they were prepared to recommend the applications should proceed.
- 4.5 The land is not a registered charity but the majority part of the Centre being held in trust formal approval to the proposal proceeding and the actions required to effect this is now required.

B. Bartley Green Library – application for powers of disposal

- 4.6 The freehold interest of the land for Bartley Green Library was gifted by Henry Adkins on 10th August 1904 and is recorded as a gift and is land held in trust.
- 4.7 The Bartley Green Library Hub is an active community group already assisting in the running of the library in partnership with the City Council Library Service and as that use increases it is appropriate that their occupation is documented by a formal lease.
- 4.8 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor to grant leases or make other disposals. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets and it is considered that the letting to the Bartley Green Library Hub will best secure that . It is also a requirement that all occupations be properly documented.
- 4.9 If successful the trust will have the ability to grant longer leases subject to further approved reports but initially the Hub require only a short lease to undertake their current operations.
- 4.10 At its meeting on 22nd January 2020 the Trusts and Charities Committee confirmed they were prepared to recommend the application to the Charity Commission and the subsequent grant of a lease should proceed.
- 4.11 Bartley Green Library is not a registered charity but the site is held in trust and formal approval to the proposal and the actions required to effect this is now required.

C. Stirchley Library – application for powers of disposal

- 4.12 The freehold interest of the land for Stirchley Library was gifted 18th September 1904 by Cadbury Brothers Limited and is recorded as a gift and is land held in trust.
- 4.13 Stirchley Art Room CIC (company no.11963099) was incorporated on 25th April 2019 and already provides volunteers to assist the operation of the library. They seek a lease of space on the first floor which they will fully refurbish at their own cost and with external grants.
- 4.14 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor to grant leases or make other disposals. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets and it is considered that the letting to the Stirchley Art Room CIC will best secure that. It is also a requirement that all occupations be properly documented.
- 4.15 If successful the trust will have the ability to grant longer leases subject to further approved reports but initially the Hub require only a short lease to undertake their current operations.
- 4.16 At its meeting on 22nd January 2020 the Trusts and Charities Committee confirmed they were prepared to recommend the application to the Charity Commission and the subsequent grant of a lease should proceed.
- 4.17 Stirchley Library is not a registered charity but the site is held in trust and formal approval to the proposal and the actions required to effect this is now required.

D. Calthorpe Park – application for powers of disposal

- 4.18 Calthorpe Park is held freehold. The Calthorpe Park Play Centre is located in the Park and continues to be very well used. Currently managed by the City Council it is a proposal to release this to be managed by a suitable community organisation.
- 4.19 The proposal will require the Trust to seek a Scheme or Order from the Charity Commission to enable a disposal by sale or lease as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for allow change. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets and to do so in this instance will require that the property is disposed of by sale or lease.
- 4.20 Other applications may need to be made to remove or amend the restrictive covenant limiting the premises to recreational uses only.

- 4.21 At its meeting on 22nd January 2020 the Trusts and Charities Committee confirmed they were prepared to recommend the applications and the subsequent marketing and grant of a lease should proceed.
- 4.22 Calthorpe Park is not a registered charity but the site is held in trust and formal approval to the proposal and the actions required to effect this is now required.

E. Sarehole Mill Recreation Ground - lease of Sarehole Mill to Birmingham Museum Trust

- 4.23 Sarehole Mill Museum is held in trust as part of registered charity no. 254995 known as "Sarehole Mill Recreation Ground (Foster for Botanical Gardens etc.)".
- 4.24 Birmingham City Council approved at their Cabinet meeting on 22 March 2016 the renewal of the wider contract for Birmingham Museums Trust (BMT) to operate the Museums and Heritage Service including provision of services at Sarehole Mill Museum and approved that the occupational leases now be granted for 25 years. On 2nd March 2016 to assist the above decision and to ensure the all due diligence was undertaken in regard to trust properties the Trusts & Charities Committee approved a report that the renewal of the lease of Sarehole Mill Museum to BMT on the same terms. Birmingham City Council approved a further report on the BMT contract and lease at its Cabinet meeting of 31 July 2018.
- 4.25 For operational reasons affecting other sites the leases are only now able to be completed. However the lease at Sarehole Mill Recreation Ground requires additional approvals from the Charity Commission before it can be completed. BMT has requested that in lieu of the lease to evidence their occupation an Agreement for Lease be completed if the completion of the lease already approved in earlier reports be delayed. There is a necessity for the occupations of BMT to be evidenced by contract to enable BMT to receive all its funding.
- 4.26 At its meeting on 20th March 2019 the Trusts and Charities Committee confirmed they were prepared to recommend the applications and the grant of a lease should proceed. There was an intention to complete these processes within twelve months one year from that date and while procedural matters and lockdown have prevented this an approval from Council as trustee is still appropriate.
- 4.27 The site is held in trust and formal approval to the proposal and the actions required to effect this is now required.

5 Appendix

- 5.1 Various Reports presented to Trusts and Charities Committee on the dates referenced above.