

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>Assistant Director – Skills and Employability</b> <b>13<sup>th</sup> November 2019</b>
<b>SUBJECT:</b>	<b>BILBERRY HILL CENTRE – POWERS FOR DISPOSAL</b>
<b>Wards affected:</b>	<b>Out of City</b>

**1. Purpose of report:**

To seek approval to obtain appropriate management powers for the land and premises known as the Bilberry Hill Centre, held in trust, including a power of disposal

**2. Decisions recommended:**

That the Committee

- 2.1 notes the premises formally leased to the Birmingham Federation Clubs for Young People is considered to be held in trust but are now vacant, the Federation having been recently placed in administration.
- 2.2 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' and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval.
- 2.3 delegates to the Assistant Director of Property authority to secure appropriate valuation and marketing advice for the disposal of the property in line with statutory requirements of the Charities Act 2011 and to negotiate the terms of any disposal subject to the terms and conditions of any disposal having been first considered by the Committee
- 2.4 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above recommendations

<b>Lead Contact Officers:</b>	Nigel Oliver , Property Manager
<b>Telephone No:</b> <b>E-mail address:</b>	0121 464 3028 nigel.g.oliver@birmingham.gov.uk

### **3. Compliance:**

#### **3.1 Consultations:**

Further consultation regarding this report is not required nor envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them. The premises are 'out of the City boundaries so there are no direct Ward Members.

#### **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 is responsible for ensuring the Trust is properly managed in all regards.

The Bilberry Hill Centre is held freehold. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal may not assist in this instance. Disposal may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties. Lettings to connected persons including Birmingham City Council would also be subject to a specific application for approval from the Charity Commission.

#### **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. The trustees are responsible for ensuring appropriate cost controls are in place. There are no current capital or revenue resources. If a disposal is supported this will secure either a revenue stream from a letting or a capital receipt from a disposal of the freehold interest. Any transactions will be conducted in line with statutory processes set out in the Charities Act 2011 and receipts ring-fenced and invested appropriately for the Charity. 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 costs for which are to be determined. All future running costs for the premises will continue to be covered by the incoming tenant/purchaser to be selected to avoid any burden on the trust.

#### **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 land and premises forming the Bilberry Hill Centre located at Rose Hill adjoining the Lickey Hills Country Park was acquired in three parts two of which are considered to be held in trust. The larger part of the trust was gifted to the Council on 4<sup>th</sup> September 1903 by Barrow Cadbury. A smaller area of land adjoining was gifted to the Council on 17<sup>th</sup> December 1904 by Barrow Cadbury and Ernest J Bigwood. The third part is not held in trust being a monetary purchase by the Council from Earl of Plymouth on 2<sup>nd</sup> October 1914. It is a much larger area of land forming part of the Country Park a small portion of which the Federation expanded onto in the 1960's. The trust land is not a registered charity.
- 4.2 On acquisition the premises originally included the smaller properties known as the Crown Temperance Hotel and Bilberry Cottage but by 1916 these were replaced and expanded into the Bilberry Hill Tea Rooms and the separate Coach House. Use of the Tea Rooms and restaurant continued until the 1960's but the premises have been leased to the Birmingham Federation Clubs for Young People (Charity Number 522850) since 1970 as a residential activity centre. The premises have nominally been in the management of the Youth Service who grant aided the rent but on the Federation being placed in Administration and the keys returned to the Council the premises have been declared surplus to their requirements. The premises are not in good condition.
- 4.3 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 any mechanism for change and currently there is no ability to provide an alternative use for the premises. 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. To progress any disposal either by freehold disposal or letting it is necessary for the trustees to hold the appropriate powers.
- 4.4 Other applications may need to be made to remove or amend the restrictive covenant limiting the premises to recreational uses only.
- 4.5 **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. The specific objects of the trust as set out on this acquisition is to operate the premises in accordance with the provisions contained in the Birmingham Corporation (Consolidation) Act 1883 with reference to Parks.
- 4.6 **Trustee Powers**  
A trust's constitution is set out within the executed Trust Deed for each property 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 exist or can be obtained for the Trustees to make decisions on the future of the assets including disposals.
- 4.7 **Trust Finances**  
The sole asset of the trust is the land and properties. The trust has no revenue source or capital investments.
- 4.8 **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 occupation of land requires to be properly regularised and this is most safely achieved by the grant of an appropriate lease.

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

- 6.1 To better safeguard the Trust's assets overall, remove potential burdens and seek to preserve the buildings.

**Signatures:**

Chief Officer(s): .....

Dated: .....

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

1. Deed of Acquisitions dated 4<sup>th</sup> September 1903 and 17<sup>th</sup> December 1904

**List of Appendices accompanying this Report (if any):**

1. None.