

**BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE****PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>DIRECTOR OF PROPERTY</b>
<b>Date of Decision:</b>	<b>21 September 2016</b>
<b>SUBJECT:</b>	<b>BURBURY PARK – CHARITY COMMISSION REGISTRATION NUMBER 1076676 – DISPOSAL OF LODGE</b>
<b>Wards affected:</b>	<b>Aston</b>

**1. Purpose of report:**

- 1.1 To seek approval to obtain revised powers for the management of Burbury Park, including powers of disposal.

**2. Decisions recommended:**

That the Committee

- 2.1 notes the Burbury Park Lodge (the “Lodge”) will be vacant on the retirement of the current employee
- 2.2 authorises an application is made to the Charity Commission to obtain appropriate powers for the better management of the trust holdings including power of disposal by Charity Commission Scheme, and/or seek an Order from the Commission sanctioning the disposal of designated land
- 2.3 authorises the recommendation of the Trusts and Charities Committee be advanced to a future meeting of the Council as Trustee for approval once it is determined by the Trust, that it is expedient in the interests of the charity to dispose of the Lodge
- 2.4 delegates to the Director of Property to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the Lodge
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation including the applications to the Charity Commission to give effect to the above recommendations and to apprise the Committee of the results of the applications and consultation..

<b>Lead Contact Officers:</b>	Nigel Oliver, Birmingham Property Services
<b>Telephone No:</b> <b>E-mail address:</b>	0121 303 3028 nigel.g.oliver@birmingham.gov.uk

### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

The current employee retires in October 2016 and Parks do not intend to require any employee to use the Lodge as their principle residence to comply with their employment contract, therefore the property will be vacant and at risk. Officers in Parks are likely to declare this property surplus to their requirements.

##### External

Public consultation is not required nor envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the various Charities Acts.

#### **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 Deed, as amended by any Scheme approved by the Charity Commission.

The Burbury Park is held freehold as the Council as Sole Trustee is responsible for ensuring the Trust is managed in accordance with the governing document and in accordance with charity law and having regard to any relevant Charity Commission guidance.

That the Lodge will be vacant and at risk requires the Trustee to consider and evaluate options for the Lodge. The most appropriate way to do so is first to revise the current Scheme and allow more modern powers including options for the disposal of property. Disposal in this instance includes freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties including the City Council.

The existing Charity Commission Scheme dated 30 June 1999 does not expressly provide a power of disposal for the Lodge itself. Additionally, all the land held by the Trustee has been designated specifically for the use of the objects of the charity (see below use at paragraph 4.2). As the land is 'designated' the Trustee will need to apply to the Charity Commission for appropriate powers and/or an Order from the Commission sanctioning the disposal. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustees Act 1996, which would ordinarily provide an implied statutory power of disposal will not assist on this occasion.

#### **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. In all cases it is required that all such disposals be conducted in line with statutory processes set out in the Charities Act 2011 and that the proceeds of any sale be ring-fenced and invested in trust for the Charity. Any disposal of the land, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a ~~qualified~~ qualified valuer. Any fee for this will be reclaimed from any capital receipt. Disposal in this instance means freehold sale or the grant of leases.

Running costs for the lodge are currently covered by the Parks Service on behalf of the Trustee. Disposal will mean there is no continuing cost/liability to the Trust.

#### **3.4 Main Risk Management and Equality Impact Assessment Issues (if any):**

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, no decision is made until the 'Council as Trustee' has it is determined it is expedient in the interests of the charity to dispose of the Lodge

#### **4. Relevant background/chronology of key events:**

- 4.1 Burbury Park was created from the gift from William Middlemore of 1.64 hectares of land on 1<sup>st</sup> December 1876. Additional areas of land have been acquired to expand the Park but those are not held in trust. The lodge has been used for the accommodation for a park keeper since the original park was laid out. This is Charity no. 1076676 registered from 21<sup>st</sup> July 1999.
- 4.2 The specific objects of the trust are 'to improve the conditions of life for the inhabitants of the area of benefit without distinction of political, religious or other opinions by the provision and maintenance of a recreation ground and community centre'. The assets of the Trust should be used to advance the objects of the charity.
- 4.3 The proposal to seek a revised scheme is necessary as the current scheme is very limited. 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 change. To better protect the assets the Trust must have available appropriate powers to let or if required dispose of property. The objects of the charity are very wide ranging and therefore could be met by other users but a proposal to dispose would enable the property to be brought back into use by others quickly at no cost to the charity but delivering a capital receipt or revenue income from rent.
- 4.4 If disposal is judged to be in the best interests of the charity the preference is to sell the freehold interest as the detached house and small garden can be removed from the trust without detriment to the remainder of the trust land or the wider park and BCC/Trust responsibilities would be brought fully to an end. Alternative means of disposal such as a long lease will also be considered.
- 4.5 **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.
- 4.6 **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 exist or can be obtained for the Trustees to make decisions on the future of the assets including disposals.
- 4.7 **Charity Finances**  
Formal accounts are required to be prepared for the Charity Commission returns where appropriate. Income is received from the Community Centre. All but is far exceeded by the general maintenance obligations for the parkland where all duties are undertaken by BCC Parks Service.

#### **5. Evaluation of alternative option:**

This report seeks approval only to make applications to gain appropriate powers for disposal in order that once a decision on the form of disposal is made it can be properly effected. Disposal in this instance includes options for the freehold disposal by sale, the grant of leases and the transfer of management to other bodies. Any such decision will be subject to a further report.

To do nothing is not an appropriate option as the building will remain at risk.

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

- 6.1 To better safeguard the Trust's assets overall, converting property liabilities to monetary assets and bringing vacant buildings back into beneficial use. The disposal will remove a building at risk of vandalism, falling into disrepair, or otherwise becoming a liability to the Trust.

**Signatures:**

Chief Officer(s): .....

Dated: .....

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

1. Scheme of Powers from the Charity Commission dated 30 June 1999

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

1. Plan of the boundaries of land included in a disposal.