

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Service Director - Sport, Events, Open Space and Wellbeing
Date of Decision:	19 July 2017
SUBJECT:	CALTHORPE PARK – LEASE TO HEALTH & WELLBEING SERVICE MUTUAL ORGANISATION
Wards affected:	Hall Green

1. Purpose of report:

- 1.1 To seek approval to obtain revised management powers for Calthorpe Park, held in trust, including a power of disposal and to grant a lease of part to the Health & Wellbeing Service or the mutual organisation to be formed.

2. Decisions recommended:

That the Committee

- 2.1 notes the Health & Wellbeing Service now manages the former Calthorpe Park Play Centre on Edwards Road and wish to continue the provision of services from this hub location and that the Service transformation being proposed as set out in the proposed Cabinet report seeks approval to facilitate the establishment of a community benefit society (also known as a mutual) to deliver the council outcomes currently being delivered through the Wellbeing Service and that this change will require the occupation of the premises on the trust's land to be regularised by the grant of a formal lease.
- 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'
- 2.3 authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- 2.4 authorises the disposal by way of a lease for up to 25 years from an early date to be agreed, of the land currently allocated to the Service being granted to the Health & Wellbeing or its mutual organisation once established, and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval
- 2.5 delegates to the Assistant Director of Property (Interim) authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the property and negotiate the terms of any disposal
- 2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease including the applications to the Charity Commission to give effect to the above recommendations and to remove or amend the restrictive covenant and to apprise the Committee of the results of the applications and consultation.

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3. Compliance:

3.1 Consultations:

Internal

Officers in the Health & Wellbeing Service have undertaken all consultation and included the continuation of service provision at this location in their Service review report "A Sustainable Solution for the Future of the Wellbeing Service Outcomes" to be report to Cabinet.

External

Public consultation on the Wellbeing Service review is complete and 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.

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 re-organisation of the Health & Wellbeing Service will safeguard the provision of services to the local community which services assist the trust to meet its objects around recreational use of the Park.

Calthorpe Park is held freehold. The land and property was provided for a designated use and is regarded as 'specie land' by the Charity Commission. 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 will not assist in this instance. Disposal in this instance 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. It remains to be declared if the proposed mutual will still be a connected person for these purposes.

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. All future running costs for the premises will continue to be covered by the Wellbeing Service. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue ring-fenced and invested in trust 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. Any fee for this will be reclaimed from the Wellbeing Service.

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 Calthorpe Park was the second public park in Birmingham opened 1st June 1857 on land owned by Lord Calthorpe. At that time the land was held only by 'licence'. This situation continued until 1894 when the freehold was transferred to the Birmingham Corporation with the sole restriction that the Corporation were bound to use the land only for the purposes of a recreation ground (as per the Recreation Grounds Act 1859 and Birmingham Corporation (Consolidation) Act 1883). This transfer appears to have been a gift and is treated as land held in trust.
- 4.2 In 1893 and 1899 the parkland was extended by further formal acquisition. These are not gifts nor have any charitable status. In 1900 land a land exchange regularised the shape of the park while enabling the adjoining housing development or the expansion of Balsall Heath. The land then accepted into the Park is treated as held in trust Other land has been added along Clevedon Road after slum clearances in the 1960's and 70's and although contiguous with the Park are not considered to be part of Calthorpe Park nor as monetary purchases will they have any charitable status. The Park continues to be very well used. This is not a registered charity.
- 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 all occupations be properly documented. It is overdue that the activities of the Play Centre and now the Wellbeing Service is formally recognised and documented.
- 4.4 Other applications will 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 are simply to 'use of the premises as a public park and the presence and activities of the Wellbeing Service enhance this.
- 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 property. The trust has no revenue or capital investments. The property to be leased has been managed and maintained by Birmingham City Council Play Service before transfer to the Health & Wellbeing Service and is in good condition.
5. **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, retaining public services leading to the healthful recreation of the citizens of Birmingham within this public park.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 29th June 1904
2. Cabinet report of 28th June 2017 "A Sustainable Solution for the Future of the Wellbeing Service Outcomes". Report deferred.

List of Appendices accompanying this Report (if any):

1. Location plan of the land used by the Wellbeing Service.