

REPORT OF TRUSTS AND CHARITIES COMMITTEE**A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY
COUNCIL AS TRUSTEE.**

1. PURPOSE/SUMMARY

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.

To note also the formation of Birmingham Charities Limited ("BCL"), Companies House Registration number 10392574, as a charitable company (of which the Council is sole member) and which has been established to permit the disposal of assets by the Council's various charitable trusts as Sole Corporate Trustee and in its statutory capacity and as a "connected person" for the purposes of S117 -118 of the Charities Act 2011.

BCL is jointly a non-exempt charity and is regulated by the Charities Commission and Companies House.

2. BACKGROUND

Governance arrangements

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.

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.

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.

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.

Birmingham Charities Limited

Any disposal between a charitable trust and Birmingham City Council will have to be sanctioned by the Charity Commission as a “connected person” disposal for the purposes of Part 7 Charities 2011.

However, the Charity Commission is aware of the legal principle established in case of *Rye v Rye* [1962] A C 496 that no one person can be both landlord and tenant of their own property. This also is the position adopted by the Land Registry who would have to be approached to register the Council’s leasehold interest in any land it seeks to acquire for use in its statutory capacity.

Paragraph 4.4 of Land Registry Practice Guide 25, updated on the 3 April 2017, states that:

“The House of Lords decided that neither one person, nor a company, can create a lease in favour of the same person or company. Any attempt to do so is without legal effect (Rye v Rye [1962] A C 496). Therefore, we also cannot give any kind of registered title to such a lease.”

All the Council’s charitable trusts (registered and non-registered with the Charity Commission) are unincorporated. This means that none of these charitable trusts have a sufficiently separate and distinct legal personality to grant a lease back to Birmingham City Council where the Council wishes to use or occupy trust land for its statutory purposes.

Where a charitable trust has agreed to enter into a lease (as landlord) or make a disposal of land held in trust back to the City Council and Part 7 Charities Act 2011 applies, the only way to effect this disposal or lease is through a charitable company which has the power to hold and acquire land on behalf of the Council as Corporate Trustee. Once the charitable company has legally acquired the interest in the land, a disposition in favour of the Council for its statutory purposes can be put in place on terms agreed with the relevant charitable trust and then be registered with the Land Registry.

Therefore, the charitable trust would first need to transfer the assets of the charity agreed to be disposed of, (either the freehold or more usually by long “headlease” to a wholly owned charitable company formed for that purpose. The terms of any such headlease to the Council charitable company must be sufficient to allow the Council itself to enter into a sub-lease for the interest it would seek to acquire from the relevant charitable trust.

Following guidance issued by the Charity Commission, Birmingham Charities Limited, charitable company Companies House Registration number 10392574 was incorporated on the 23 September 2016 in order to give effect to the matters set out above and it’s Articles of Association as set out within Appendix 2 of this Report.

3. MATTERS TO BE DETERMINED

A. Highbury – Grant of Long Lease to Chamberlain Highbury Trust (“CHT”)

The Estate comprises approximately 13.03 hectares (32.2 acres) of park land including Highbury Hall, Chamberlain House and three lodges gifted by the heirs of the Right Honourable Joseph Chamberlain on 31st March 1932 and is held in trust as Registered Charity no. 1039194.

Chamberlain Highbury Trust (Registered Charity no. 1169845) has been formed to manage the estate in future and to seek funds to refurbish Highbury. Approval has already been given to grant a lease of the estate (excluding Chamberlain House already leased to Birmingham City Council for school purposes) at a peppercorn rent and for up to 35 years to the Chamberlain Highbury Trust.

CHT recently submitted a bid to the Heritage Lottery Fund (HLF) which was not successful. CHT will be submitting a refreshed bid in March 2018. Funds from HLF are limited and will continue to be limited in future years and in reviewing their proposed submission have identified that an improved business model for the CHT management of the Estate would be to have a longer lease and have requested that a 125 year lease be granted.

At its meeting on 17th January 2018 the Trusts and Charities Committee considered a report for the grant of the longer lease to CHT for the reasons set out and recommended that the decision proceed to approval by the Council as Trustee. The land is held in trust and formal approval to the disposal or transfer and the actions required to effect this is now required.

The Highbury Estate is held in trust and formal approval to the disposal and the actions required to effect this is now required.

B. Cropwood Estate – Hunters Hill College use of additional land

The Estate comprises 36.5 hectares of land at Cropwood originally gifted by Barrow Cadbury and Mrs Geraldine Cadbury, and approximately half of this has always been used for the College campus, whilst the remaining pasture land and woods was to be let on agricultural tenancies to provide an income to the Trust. The College has been operating a small agricultural unit to better support the school curriculum and are requiring to expand the amount of land directly required for animal husbandry and have requested the use of further additional land for the school.

At its meeting of 19th July 2017 the Trusts and Charity Committee acknowledged that the proposal by the College to take more land into direct occupation was not detrimental to the objects of the trust or the future management of the Estate and it was prepared to recommend that 7.01 hectares of land (parcels C and D shown in Appendix 1) be let to the College subject to the negotiation of suitable terms for its disposal. This was approved at Council as Trustee on 12th September 2017.

Subsequently the College has requested the remaining pasture (parcels A and B) and the adjoining woodland areas be allocated to them to further support the development of the agricultural unit and wider schools use. A visit to the College by the Trusts and Charities Committee was undertaken on 15th November 2017 and at its meeting of 17th January 2018 it acknowledged that the use of the remaining land by the College was appropriate and could be recommended. The College also requested that all land be let to them at a peppercorn rent (at less than best value) which the Committee were also prepared to recommend, the

loss of any income due to the Trust being more than off-set by the College accepting management responsibilities for the land, subject to the Trust being able to resolve the normal requirements of the Charities Act 2011 to obtain best value.

It is noted that the College have a Charity arm, the Hunters Hill Charitable Trust and it may be appropriate that the letting is to that Charity. The Trust already has all necessary powers to enable the disposal to proceed but may require further approvals from the Charity Commission.

The Cropwood Estate is a registered charity no. 1085296. The land is held in trust and formal approval to the disposal and the actions required to effect this is now required.

C. Cannon Hill Park – installation of the Sousse and Bardo Memorial

Trustees will recall the two terrorist incidents in Tunisia and the loss of lives there which this proposed memorial represents. The placement of this memorial in Cannon Hill Park has been requested after discussion between the Foreign and Commonwealth Office with officers at several local authorities including Birmingham City Council and in consultation with the victims and their relatives. Birmingham and Cannon Hill Park was requested as the preferred base due to the central location of Birmingham and the accessibility and quality of the park landscape. The site selected is an area suitable for quiet contemplation and for additional installations and the memorial is judged to be an attractive addition to the Park. The area will once installation is complete be fully open to the public as part of the park.

The cost of the design and construction works will be fully funded by the Foreign and Commonwealth Office who will organise and manage the contract for its installation and also provide to the BCC Parks Service a substantial dowry to off-set future maintenance. Any agreements or 'disposals' for the use of the land will be conducted in line with statutory processes set out in the Charities Act 2011 but it is not envisaged that any rent will be charged for the installation. The conduct of the site operations will be overseen by Parks officers.

Cannon Hill Park was formed from the original core gift of 57 acres from Miss Louisa Anne Ryland on 18th April 1873 who also gave money for it to be laid out as a park and opened on 1st September 1873 but was soon extended by a number of other gifts and purchases to form the current Park of approximately 80.66 acres (32.65 hectares). The substantive part of the original gifted land is listed by English Heritage in the Register of Parks and Gardens of Specific Historic Interest in England. The proposed memorial is located on the original core gift of land.

At its meeting on 17th January 2018 the Trusts and Charities Committee confirmed they were prepared to recommend the installation proceeded but also requested Parks officer make representations to the Foreign and Commonwealth Office for further improvement works to take place in the Park.

Cannon Hill Park is held in trust and formal approval to the proposal proceeding and the actions required to effect this is now required.

D. Birmingham Charities Limited

To note the formation of Birmingham Charities Limited, charitable company Companies House Registration number 10392574, incorporated on the 23 September 2016 to be used to effect disposals of land or properties held in trust by Birmingham City Council to Birmingham

City Council where Birmingham City Council desires to use such land or property for its statutory purposes and where such disposal is first approved at Council as Trustee as set out more fully in the Governance section above; and which will be used initially to complete the leases to be granted of land at both Grove Park for the Kenrick Centre and at Highbury for the Uffculme Special school at Chamberlain House as previously approved at Council as Trustee as set out in the Motions below.

MOTIONS

That Full Council sitting as 'Council as Trustee':

- A. Highbury – Grant of Long Lease to Chamberlain Highbury Trust
 - i) approves the grant of a lease of the Highbury Estate (excluding the land which is the subject of a separate lease to Birmingham City Council for its use by Uffculme Special School) to an independent charity, namely the Chamberlain Highbury Trust as identified in the report to Trust and Charities Committee of 17th January 2018 on terms to be agreed and for a term up to 125 years.

- B. Cropwood Estate - Hunters Hill College use of additional land
 - i) approves that the land identified as parcels A and B as identified in the report to Trust and Charities Committee of 17th January 2018 together with the woodland either side of Spirehouse Lane be added to the land already occupied by the College and let to the College on terms to be agreed or if required let to the Hunters Hill Charitable Trust.

- C. Cannon Hill Park – installation of the Sousse and Bardo Memorial
 - i) approves the erection and dedication of the memorial on land identified in the report to Trust and Charities Committee of 17th January 2018 on terms to be agreed.

- D. Birmingham Charities Limited.
 - i) approves the disposal of any land held in trust approved by Council as Trustee to the charitable company, where this is required in order to effect any disposal back to the City Council in its statutory capacity as a “connected person” pursuant to Sections 117-s118 Charities Act 2011.
 - ii) To note that the formation of this charitable company supersedes any requirement to have established individual charitable companies for the relevant charitable trust seeking to dispose of assets back to the City Council as previously approved by the Council as Trustee at its meeting on 6th December 2016, specifically, the disposal of land at Grove Park held in trust as the ‘Public Park in Harborne’ registered charity no.501802 in respect of the Kenrick Centre;
 - iii) To note that the formation of this charitable company supersedes any requirement to have established individual charitable companies for the relevant charitable trust seeking to dispose of assets back to the City Council as previously approved by the Council as Trustee at its meeting on 4th March

2014, specifically, the disposal of land at Highbury registered charity no. 1039194 in respect of Chamberlain House for its use by Uffculme Special School.

and

that the Assistant Director of Property (Interim) 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.

Appendix

1. Various Reports presented to Trusts and Charities Committee on the dates referenced above.
2. Birmingham Charities Limited - Articles of Association

Chairman of the Trusts and Charities Committee

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Councillor Habib UL Rehman