

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Corporate Director of Place
Date of Decision:	20 September 2017
SUBJECT:	MOSELEY ROAD COMMUNITY CENTRE (FRIENDS INSTITUTE) 220 MOSELEY ROAD, B12 ODG
Wards affected:	Sparkbrook

1. Purpose of report:

To seek approval to obtain revised management powers including powers of disposal for the Moseley Road Community Centre, held in trust and progress the marketing and disposal of the property.

2. Decisions recommended:

That the Committee

- 2.1 notes the report approved at Committee on 3rd July 2013 and the continuing desire to release the premises in the open market for community purposes or, if needs be, other uses and that this will ultimately require powers to enable the disposal of the premises by sale or by the grant of a formal lease or leases, but for which no existing power exists.
- 2.2 confirms that Expressions of Interest from the third sector with a view to transferring management or ownership of the building be sought in line with the terms approved by Committee on 3rd July 2013
- 2.3 authorises that separately applications be made to the Charity Commission to obtain a further revision to the existing Scheme for the better management of the trust assets including powers of disposal, winding up the Charity if appropriate and/or seeking to widen the charitable activities at the premises
- 2.4 authorises, if necessary, the making of applications including a Deed of Release from the gifter's family seeking to remove or amend the restrictive covenants limiting the use of the premises that might hinder disposal or future use
- 2.3 authorises the disposal of the premises by way of a sale or by a lease, for up to 35 years from an early date to be agreed, to an appropriate organisation or persons to be determined via the proposed marketing and selection procedures
- 2.4 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 that disposal
- 2.5 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, consultation and marketing.
- 2.6 and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval

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3. Compliance:

3.1 Consultations:

Internal

Sparkbrook Ward Councillors have been made aware of the proposal to seek expressions of interest from other parties to take over responsibility for the Trust (as per the 2013 Committee resolution); and of the need to seek permissions to dispose of the building by lease or sale (Outline Options Paper 05.04.17; e-mails of 22.06.17 and 31.08.17). Pending the receipt of specific proposals, the Councillors have not expressed a view about the options.

External

Public consultation regarding this report is required only as it may be necessary to satisfy the requirements of the Charity Commission in support of the proposed applications to them. Accordingly officers in the Place Directorate, as the current managers of the premises, have opened consultation with existing users to advise them of the proposed intentions of this report. Similar consultation is understood to have taken place before and after the earlier report but matters were not otherwise progressed at that time. At a meeting with user groups representatives on 13th July 2017 it was determined that a new Scheme would be required as soon as possible.

3.2 Are there any relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?

Birmingham City Council is the named Custodian Trustee for the Moseley Road Community Centre with the former Leisure Services Committee named as the Managing Trustees. However, current advice is that the Committee no longer exists nor is there a direct successor committee to delegate this to.

The City Council 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. The Trusts & Charities Committee can initiate actions to assist the future management of the Trust. 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.

Moseley Road Community Centre is held freehold. The land and property forming the Centre 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.

3.3 How will decisions be carried out within existing finances and resources?

As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards and exercises a duty of prudence to ensure that the charity is solvent and appropriate cost controls are in place. Currently all costs are covered by the City Council's Neighbourhood & Communities Division but they no longer have a budget to do so and it is appropriate that new powers are obtained as soon as possible to enable the Service to market the premises and seek alternative ways forward for the premises. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011. Revenue is 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.

- 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 On 25th March 1903 the property 220 Moseley Road was transferred to Birmingham City Council by Charles Alston Smith-Ryland, Thomas Frederick Chavasse and others. On 12th April 1935 the land now at 218 Moseley Road (the current Caretaker's Flat and car park) was added being acquired for nil value from Charles Watkins & another. The premises are held in trust and were registered as charity no. 516602 on 14 January 1986, known as Moseley Road Community Centre. The building is Grade 2 Listed.
- 4.2 The Friends Institute first opened in 1897 and included both the building currently known as the Moseley Road Community Centre then comprising a coffee shop, Quaker Reading Rooms and a range of smaller rooms principally used then for adult education and the property at the rear on Oughton Road now used by the New Testament Church of God which was the Quaker Assembly Rooms and a basement gymnasium. The Cadbury Family continued to own the Oughton Road premises holding these under a charitable trust known as 'The Friends Hall and Institute Moseley Road' until 1963 when they ended the trust and sold the premises in the open market.
- 4.3 The previous report to Committee on 3rd July 2013 was approved but matters were not actively progressed due to further reorganisation within the Hall Green District. The report approved that Expressions of Interest from the third sector to operate the Community Centre be sought subject to a further report to Committee reporting the outcomes of that exercise and to determine if a disposal should take place. The proposal now is to allow that marketing to progress and also to seek a revised Scheme or Order from the Charity Commission. This is necessary as neither the original conveyances nor the existing Scheme granted on 14th October 1982 nor the amendments on 29th August 1984 or 12th April 1988 provide powers required for the modern management of a trust nor any mechanism for disposal or change or winding up the charity if that becomes appropriate. 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 and that any actions of the trust are made within its existing powers or such powers as will be enabled by the grant of a further revision to the Scheme by the Charity Commission. Other applications may be required to remove or amend the restrictive covenants placed on the conveyances or to widen the use of the premises to reflect current and proposed user groups.

4.4 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 which here is *"the provision and maintenance of an institute or centre for the benefit of the inhabitants of the City of Birmingham or some part of it (a) for educational purposes; (b) for purposes of recreation and other leisure time occupation with the object of improving the conditions of life for the said inhabitants; (c) for other charitable purposes (not excluding religious purposes but excluding the relief of poverty)"*.

4.5 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 but this will require applications to the Charity Commission for a further revised Scheme.

4.6 Trust Finances

The property has been managed and maintained by Birmingham City Council Place Directorate but is not in good condition. The sole asset of the trust is the property. The trust's revenue is obtained by the hiring of space at the centre. Accounts are up to date.

5. Evaluation of alternative options:

5.1 This report seeks approval to make appropriate applications to enable change and modernisation at the Centre.

- To do nothing is not an appropriate option as the City Council cannot afford to continue to operate this building on the current arrangements and is seeking expressions of Interest from appropriate persons to lease or purchase the premises subject to Council as Trustee and Charity Commission approvals.
- The premises require capital expenditure and other parties may be better placed to apply for such funds than the City Council.
- Without a power of disposal the Trust cannot grant leases or otherwise dispose of the premises to enable the property to be refurbished or the re-organisation of its management structures
- If the attempts to market the premises for community purposes fail to find a suitable bidder it is likely that the premises will have to be sold on the open market

6. Reasons for Decision(s):

6.1 To comply with regulations, for the better safeguarding of the Trust's assets and seek to retain services for the community.

Signatures:

Chief Officer(s):

J. Kennedy

Dated:

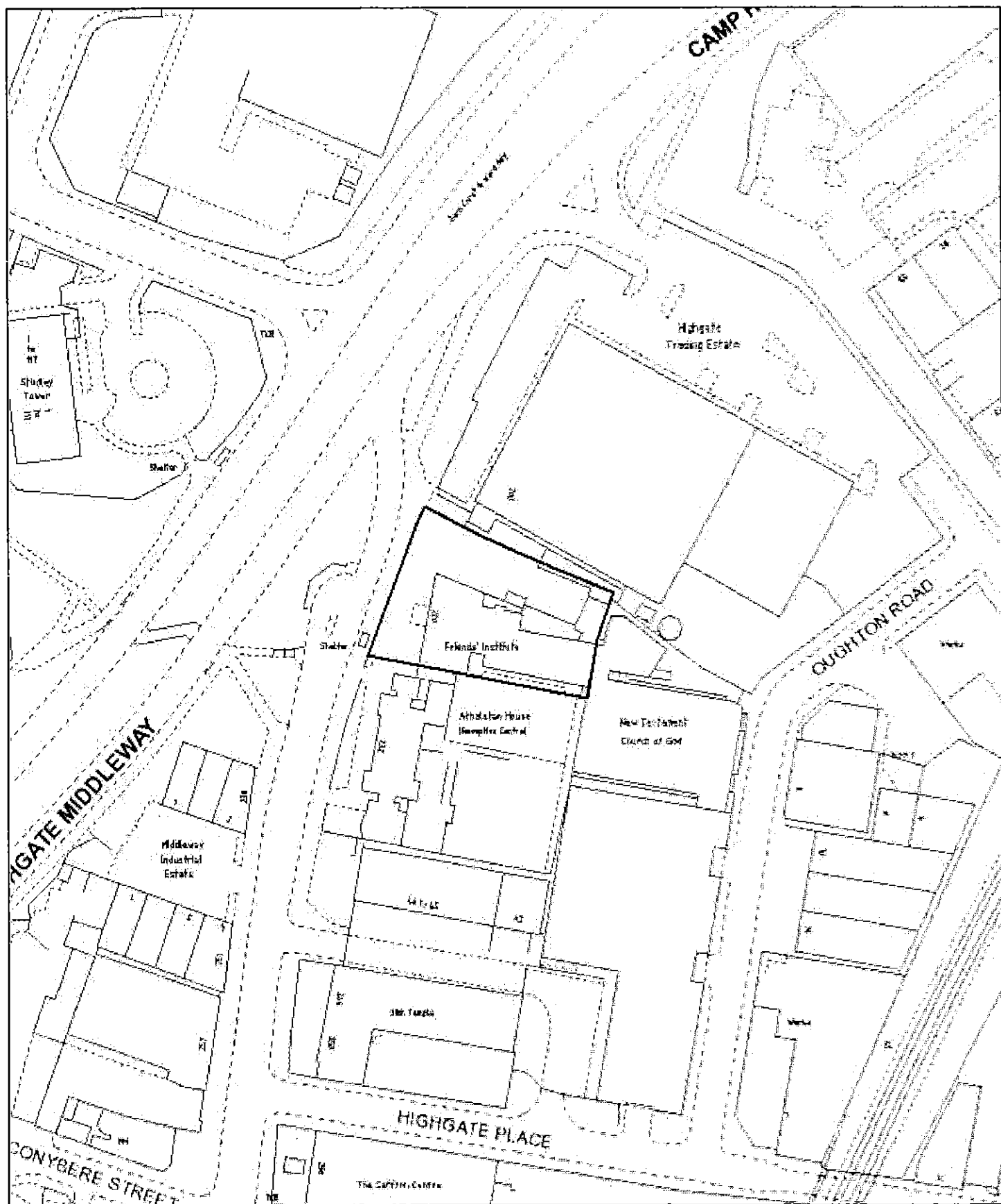
7/9/2017

List of Background Documents used to compile this Report:

1. Deed of Acquisition dated 25th March 1903
2. Deed of Acquisition dated 12th April 1935
3. Schemes of the Trust dated 14th October 1982 and amendments on 29th August 1984 and 12th April 1988
4. Report to the Trusts & Charities Sub-Committee of 3rd July 2013

List of Appendices accompanying this Report (if any):

1. Plans of the premises.



Birmingham City Council Map Created By:

Notes

Date of Map Creation: 24/08/2017

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Scale:
1:1,250

