

# BIRMINGHAM CITY COUNCIL – "COUNCIL AS TRUSTEE"

## PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	Exempt information paragraph number – if private report:
Report of:	Director of Property	
Date of Decision:	4 <sup>th</sup> March 2015	
SUBJECT:	FUTURE OF RESIDENTIAL LODGES IN PARKS HELD IN TRUST	
Key Decision: No	Relevant Forward Plan Ref:	
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/>	
	O&S Chairman approved <input type="checkbox"/>	
Relevant Cabinet Member(s) or Relevant Executive Member:	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	ALL	

### 1. Purpose of report:

To consider the future of residential lodges in Parks held on charitable trust, further to report presented to Committee on the 5<sup>th</sup> November 2014. This matter was not included in the Forward Plan because the governance of Charitable Trusts does not give rise to any "key" decisions.

### 2. Decision(s) recommended:

That Committee

- 2.1 notes the review of trust assets has been completed and approves the proposed actions determining the future of each lodge
- 2.2 recommends the disposal of the freehold interest of the three existing vacant lodges and notes that further reports will be presented should other properties become vacant.
- 2.3 the recommendation of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval.
- 2.4 if appropriate, an application be made to the Charity Commission for a Scheme which would include powers to dispose of the freehold interest in the Trust property.
- 2.5 approval be given to the terms of any disposal being delegated to the Director of Property who will work with external agents to secure appropriate valuation advice to comply with statutory requirements of the Charities Acts and be authorised to complete negotiations for the proposed disposal either by auction or by private treaty.
- 2.6 That the Director of Legal Services and Democratic Services be authorised to make all investigations and applications required and negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

Lead Contact Officer(s):	Nigel Oliver – Property Manager, Birmingham Property Services
Telephone No:	0121 303 3028
E-mail address:	nigel.g.oliver@birmingham.gov.uk

### **3. Consultation**

Consultation should include those that have an interest in the decisions recommended

#### **3.1 Internal**

The Chairman of the Trusts & Charities Committee was consulted on the preparation of this Report, along officers who support the Committee within Birmingham Property Services, Legal & Democratic Services and Corporate Finance and Audit. Full consultation has also been undertaken with Parks officers who support the actions proposed.

#### **3.2 External**

N/A

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

Notwithstanding the legal separation of functions, duties, and responsibilities as between Birmingham City Council and the Council in its capacity as Sole Corporate Trustee, the objects/purposes of the Council's charitable trusts, all have a commonality, namely for the benefit of the public and principally are to be held as public open space for the citizens of Birmingham. The actions proposed are consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham" but will also ensure the improvement of trust position overall.

#### **4.2 Financial Implications (Will decisions be carried out within existing finance and resources?)**

Very few of the charitable trusts affected have any assets except the properties in question. As there is no revenue or capital accrued to date, the charitable trust is not in a financially viable position to manage the properties and has to consider alternative measures.

#### **4.3 Legal Implications**

Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees must also comply with Charities Act 2011, Trustee Act 2000 (the Section 1(1) statutory "duty of care" (using reasonable care and skill as Trustee) applies when disposing of land generally, but specifically when the Council as Trustee is relying on the implied power of disposal as absolute owner within Section 6(1) of the Trusts of Land and Appointment of Trustee Act 1996), other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Legal sanction can follow from either the beneficiaries of the charitable trust and/or Charity Commission. Decisions made by the Council as Trustee must be expedient in the interests of the charity at all times, and where necessary be supported by appropriate evidence from suitably qualified professionals.

#### **4.4 Public Sector Equality Duty (see separate guidance note)**

None. 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.

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

- 5.1 On the 5<sup>th</sup> November 2014 a report was presented to Committee seeking approval to place the park lodges in Housing Management within the Place Directorate of the Council pending a further report being brought to Committee summarising proposed longer term solutions for the lodges and the powers required to advance them.
- 5.2 Measures to advance the transfer to Housing Management within the Place Directorate have not progressed further at this stage and management is still with the Parks Service. A report to Cabinet is being advanced by Housing officers in April but this does not include any of the trust properties, which will be covered in future reports. As the options appraisal for longer term solutions for the lodges has been undertaken it is appropriate to advance those actions. The recommendation is to dispose of lodges as they become vacant and ringfence the capital receipt for the individual trust. This report recommends the disposal of lodges at Calthorpe Park, Queens Park and Selly Oak Park.
- 5.3 All options have been fully considered and ultimately the appraisal concludes that divesting the Trust of its property responsibilities would be the most appropriate action for each Trust. This will rationalise the portfolio without affecting the primary use of the park as open space, avoid the continuing dilapidation of the assets and secure capital for the Trust. All capital receipt will be ring-fenced to each individual trust.
- 5.4 Subject to any restrictions contained within the constitution of the relevant charitable trust and compliance with charity law four properties are vacant and could be sold immediately. The proposed action would be to sell at auction with an appropriate reserve but if not successful consider other appropriate routes for a disposal. Those properties which are occupied will have either Parks service tenants or retired staff and will likely be managed by Housing for the time being until such time as they may become vacant when further reports may be brought forward.

### **Aims and Objectives of the Charity**

- 5.5 Each park is held as a separate charitable trust principally for the provision of open space and parks for the citizens of Birmingham and decisions taken by the Council as Trustee need to be in the best interests of that trust, having regard to the matters set out within paragraph 4.6 above.

### **Trustee Powers**

- 5.6 The charity's constitution is set out within the executed Trust Deed for each park principally the acquisition deeds unless subsequently amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents and any restrictions contained therein. Subject to compliance with the Charities Act 2011, Trustee Act 2000, and the Trusts of Land and Appointment of Trustees Act 1996 sufficient powers should exist for the Trustees to make decisions on the future of these assets including disposal. Officers advising the individual charitable trust may need to approach the Charity Commission for a Scheme if the land is designated (is land that is settled on specific charitable trusts held by the charity and required to be used for a particular purpose or purposes of the charity) and the Council as Trustee does not intend to replace this land on similar trusts.

### **Charity Finances**

- 5.7 Accounts are prepared for the Charity Commission returns where appropriate but there is no income or capital assets in any of the trusts. Where income such as the residential rent is paid it is paid to Parks in lieu of their management and repairing duties. The same will apply is the lodges transfer to Housing management. It is appropriate to consider alternative resolutions for each lodge. If any lodges are held on designated land appropriate replacement of land may be required and would be funded from the capital receipt but this will be clarified before any disposal proceeds.

<b>6. Evaluation of alternative option(s):</b>							
6.1	There is not a 'do nothing' option but the lodges can still transfer to Housing Management if preferred. Rental income will accrue to Housing while in their management and as Housing will need to undertake essential repairs and invest in the lodges before they are suitable to let and should disposals take place after this they will seek appropriate recompense.						
6.2	Trust properties are not subject to the Housing Acts and right to buy legislation and it would be possible for the Trust to let the lodges in the open market on Assured Shorthold Tenancies. However none of these trusts have any current resources to fund improvements and neither are there staff resources to manage the properties.						
<b>7. Reasons for Decision(s):</b>							
7.1	To better safeguard the Trust's assets, secure capital funds for each trust or legitimate occupation and demonstrate continuing support for the objects of the Charity thereby complying with the trustee's duty of prudence in effectively managing the assets of the charity.						
<table border="1"> <tr> <td><b>Signatures</b></td> <td><b>Date</b></td> </tr> <tr> <td> <b>Chairman of the Trusts &amp; Charities Committee</b>   ..... </td> <td></td> </tr> <tr> <td> <b>Chief Officer</b>  <b>Director of Legal &amp; Democratic Services</b>   ..... </td> <td></td> </tr> </table>		<b>Signatures</b>	<b>Date</b>	<b>Chairman of the Trusts &amp; Charities Committee</b>  .....		<b>Chief Officer</b> <b>Director of Legal &amp; Democratic Services</b>  .....	
<b>Signatures</b>	<b>Date</b>						
<b>Chairman of the Trusts &amp; Charities Committee</b>  .....							
<b>Chief Officer</b> <b>Director of Legal &amp; Democratic Services</b>  .....							
<b>List of Background Documents used to compile this Report:</b> None							
<b>List of Appendices accompanying this Report (if any):</b> None							

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>Director of Property</b> <b>20<sup>th</sup> July 2016</b>
<b>SUBJECT:</b>	<b>CROPWOOD ESTATE – DISPOSAL OF FORMER CARETAKERS COTTAGE, SPIREHOUSE LANE</b>
<b>Wards affected:</b>	<b>Outside of the City Boundaries</b>

**1. Purpose of report:**

- 1.1 To seek approval to dispose of the property forming part of the Cropwood Estate and formerly used by the Hunters Hill School as the caretakers cottage.

**2. Decisions recommended:**

That the Committee recommends that

- 2.1 the freehold interest of the land identified in Appendix 1 be disposed of
- 2.2 the recommendation of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval once it is declared surplus to their requirements by Education Infrastructure officers
- 2.3 approval be given to the terms of any disposal being delegated to the Director of Property who will work with external agents to secure appropriate valuation advice to comply with statutory requirements of the Charities Act 2011
- 2.4 authorises the City Solicitor to negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

<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:**

The Cropwood Estate (registered Charity no. 1085296) has been used since the original gift for schools purposes. The Hunters Hill School have advised that the former Caretakers Cottage has been vacant for some years. During that time the School has investigated options for reuse and conversion to a teaching base and for a pupil garden/allotment growing area but have accepted this is not sustainable and have advised that it can be declared surplus to their requirements.

Officers in Education are reviewing matters but are likely to declare this property surplus allowing for it to be disposed of.

Public consultation is not required but may be undertaken.

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

The Cropwood Estate Trust holds the freehold interest of the land held in trust as Sole Trustee and is responsible for ensuring the Trust is managed in accordance with the governing document and in accordance with charity law and relevant Charity Commission guidance.

The Trustees of the Charity could rely on the provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal. However, the Charity Commission Scheme dated 12<sup>th</sup> November 1997, establishing the regulation of the Charity also provides appropriate powers for the disposal of assets by sale or for lease. It requires that all such disposals be conducted in line with statutory processes set out in the Charities Acts and that the proceeds of any sale be invested in trust for the Charity.

#### **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. Any disposal of the land, if approved, will be undertaken by officers in Legal Services and Birmingham Property Services. The valuation of the asset will have to be undertaken by an external valuer as required under the Charities Act 2011 and the fee for this will be reclaimed from any capital receipt.

Running costs for the Cottage is currently being picked up by Education Infrastructure. Disposal will mean there is no continuing cost to the Trust or to Birmingham City Council.

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

The Cropwood trust is empowered to undertake sales of land and property on the Estate subject to the appropriate investment of the capital receipt. The disposal will remove a building at risk of vandalism etc. Disposals of parts of the estate have already been made in 1994 and 1998.

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

- 4.1 The main area of land comprising the Cropwood Estate was gifted to the City by Barrow Cadbury and Mrs Geraldine S Cadbury on 1<sup>st</sup> June 1921 with further parcels gifted by Barrow Cadbury on 28<sup>th</sup> February 1933 and again on 20<sup>th</sup> May 1938 and is approximately 35 hectares. The trust is governed by a scheme dated 12<sup>th</sup> November 1997.
- 4.2 The specific objects of the Cropwood Estate trust are wide ranging and are: the furtherance of any charitable purpose for the benefit of the inhabitants of the City of Birmingham including all or any of the following purposes (a) the provision and support of educational facilities (b) the provision and support of facilities for recreational and other leisure time occupation with the object of improving the conditions of life for the said inhabitants (c) the relief of the aged, impotent and poor (d) the relief of sickness.
- 4.3 While originally for Outdoor School for the improvement of the health of children from Birmingham the trust land is principally used by the Hunters Hill School. Land not directly used by the school is let on an agricultural tenancy.
- 4.4 The proposal to dispose is necessary as the land can no longer effectively assist the delivery of the Objects from the Schools perspective and cannot easily be managed by officers in Education. The objects of the charity are very wide ranging and therefore could be met otherwise 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. Any disposal would be required to be at the full market value of the asset as assessed by an independent qualified valuer. Any capital receipt will accrue to trust funds and interest would be used to further the Objects.
- 2.5 If disposal is judged to be in the best interests of the charity the preference is to sell the freehold interest as the property is detached from the school and BCC/Trust responsibilities are fully brought to an end but alternative means of disposal such as a long lease will also be considered.

**5. Evaluation of alternative option:**

To do nothing is not an appropriate option as the building will remain at risk. Similar decisions to dispose of property from other trusts has more recently proposed that properties be improved and re-let to provide income to the Trust above what might be anticipated from current investment opportunities. This is an option but the recommendation is to sell based on current unimproved condition of the property, the anticipated cost of renovation and for fees for planning and other permissions together with the time required to develop any scheme for improvement/extension during which the building would remain at risk and against the general funds available within the Cropwood estate.

**Signatures:**

Chief Officer(s): .....

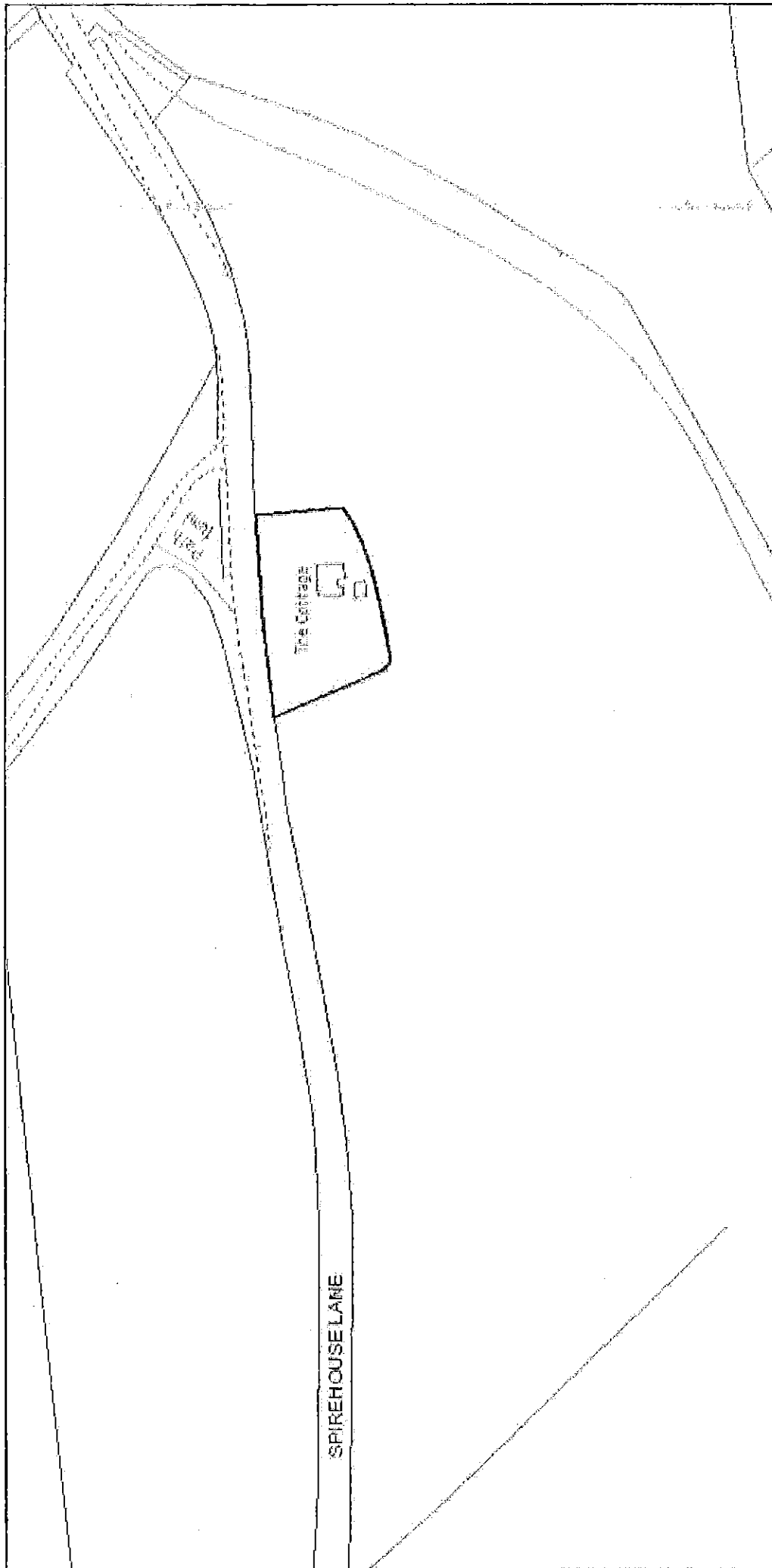
Dated: .....

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

1. Scheme of Powers from the Charity Commission dated 12<sup>th</sup> November 1997

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

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



# Map Notes

Map Created By:  
Date of Map Creation: 07/07/2016

**Birmingham City Council**



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Scale:  
1:1,250



**BIRMINGHAM CITY COUNCIL- "COUNCIL AS TRUSTEE"**

**PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>DIRECTOR OF CORPORATE FINANCE</b> <b>14<sup>th</sup> DECEMBER 2016</b>
<b>SUBJECT:</b>	<b>CANNON HILL PARK : EASEMENT FOR NEW SURFACE WATER DRAIN FOR FLOOD ALLEVIATION IN SELLY OAK</b>
<b>Wards affected:</b>	<b>SELLY OAK</b>

**1. Purpose of report:**

- 1.1 To approve the decision by the Chairman of the Trusts and Charities Committee to allow the installation of a new underground pipe through part of Cannon Hill Park as part of a wider scheme for the alleviation of flooding in Selly Oak.

**2. Decision(s) recommended:**

- 2.1 To note the action of the Chairman, in consultation with officers, in agreeing to the grant of a new easement to the Environment Agency to enable a new pipe to be installed under the service road at the rear of the Birmingham Wildlife and Conservation Park and to delegating to the Director of Property authority to undertake all appropriate actions to negotiate the terms of the easement and related documents and for the City Solicitor to prepare, negotiate, execute, seal and complete all necessary documentation to give effect to the above decisions and that the recommendation be referred to a future meeting of Council as Trustee..

<b>Contact Officer:</b>	Nigel Oliver
<b>Telephone No:</b> <b>E-mail address:</b>	0121 303 3028 nigel_g_oliver@birmingham.gov.uk

**Signatures:**

Chief Officer(s): .....

Dated:.....

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

1. Chair's Action report 12<sup>th</sup> November 2016

**3. Relevant background/chronology of key events:**

- 3.1 None additional to the attached report.

**BIRMINGHAM CITY COUNCIL- TRUSTS AND CHARITIES COMMITTEE**  
**CHAIRS ACTION – CANNON HILL PARK**  
**APPROVAL OF GRANT OF PIPE EASEMENT FOR FLOOD ALLEVIATION**

<b>Wards affected:</b>	<b>Selly Oak</b>
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- 1.1 The Environment Agency has requested permission to route a surface water drainage pipe being part of a wider flood alleviation scheme for Selly Oak along the service road at the rear of the Birmingham Wildlife and Conservation Park and being part of Cannon Hill Park held in trust and to be granted a long term Easement to document this. It is considered to be a permanent installation.
- 1.2 The Environment Agency report attached (Appendix 1) sets out the details of this large bore pipe (2.40metres in diameter) which will run from the Pebble Mill site owned by Calthorpe Estates under Pershore Road and along the length of the service road known locally as Zoo Drive and break into the River Rea. It will require temporary use of a small part of the Wildlife Park but will not affect the animal enclosures or the opening hours.
- 1.3 The works will be dug and laid by boring machine and will be except for the formation of several manhole covers be carried out from underground but will require the roadway to be closed. This closes for the duration of the works (30 weeks) an informal pedestrian route to the park but also one of the few entry points to the Park for heavy vehicles. The Parks Service has agreed to this and will make alternative routes available for the set-up of any events booked to take place in the Park. The contractor's activities on the trust land will be controlled by the Parks Service.
- 1.4 The Environment Agency will undertake the works directly which will be documented by a standard Easement agreement negotiated by the Director of Property and completed by the City Solicitor. Once works are completed the land will be fully reinstated at the contractor's expense to a standard agreed by the District Parks Manager and returned to parks use.
- 1.5 This works will require local consultation and this will be effected by the placement of necessary advertisements for the temporary loss of public open space by the City Solicitor. These are required under s123 of the Local Government Act 1972. The cost of the adverts and all legal processes will be met by the Environment Agency. Additional consultation will be completed by the Environment Agency.
- 1.6 It is proposed to allow the pipe to be installed and grant the Easement. Unfortunately as these works are urgent the approval cannot await the next meeting of the Committee and the authority of the Chairman is requested to enable the works to proceed. The matter will be reported to the next available meeting of the Trusts and Charities Committee and the recommendation passed to the Council as Trustee for approval.

<b>Contact Officer:</b>	<b>Nigel Oliver</b>
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<b>E-mail address:</b>	<b>0121 303 3028</b>
	<b>nigel_g_oliver@birmingham.gov.uk</b>

**Decision - That the Chairman**

- 2.1 agrees to the installation of a new large bore pipe under part of Cannon Hill Park adjacent to the Birmingham Wildlife & Conservation Park
- 2.2 agrees that the installation be formally documented by the grant of an easement together with the grant of a right of way over the access road known as Zoo Drive, on terms to be agreed.
- 2.3 agrees to the formation of a contractors compound on a location and terms to be agreed
- 2.4 to recommend to the next available meeting of the Council as Trustee that the matters listed in 2.1, 2.2 and 2.3 be approved.
- 2.5 That the Director of Property be authorised to negotiate and agree the terms of the easement, licence for the compound and the right of way.
- 2.6 That the City Solicitor be authorised to prepare, negotiate, execute, seal and complete all necessary documentation to give effect to the above decisions and to place any formal advertisements required under either s123 of the Local Government Act 1972 or various statutes as may relate to the charitable status of the land in the granting of these agreements.

**Signatures of the relevant Chairman in agreeing to the grant of an Easement for the pipe under part of Cannon Hill Park :-**

**Chairman of the Trusts and Charities Committee:**  
**Councillor Habib Ul Rehman**

**Date:**

**Chief Officer:**

**Date**

**Appendix 1 Report from the Environment Agency September 2016**

**Selly Park North and Selly Oak Flood Alleviation Scheme**  
**Partnership Opportunity – Updated Briefing Note – Sept 2016**

#### **Background**

There are over 150 homes at risk of flooding in Selly Park north and Selly Oak, with a significant number of these having flooded on Thursday 16<sup>th</sup> June 2016. This event followed a similar pattern to the previous flooding experienced in this area in September 2008, but was significantly larger in scale.

Whilst Selly Park north is situated on the left bank of the River Rea, the community flood primarily due to the Bourn Brook overtopping at Pershore Road (one of the main arterial routes into the city). The Rea Catchment Partnership (a group of organisations working together to deliver flood risk and environmental improvements across south Birmingham) has been working to develop a flood alleviation scheme for the community and secure the funding needed for delivery.

#### **The Proposal**

After a significant amount of detailed analysis, a number of consultants working on behalf of the Environment Agency, Calthorpe Estates and Birmingham City Council have developed a combined solution, consisting of upstream storage and downstream conveyance works. A flood risk scheme for this area has been rigorously appraised and assessed, with two Environment Agency framework contractors confirming that the proposed scheme is the best option for managing flood risk in this area. Details of this scheme have been provided in the hybrid planning application being considered.

#### **June 2016 Flood Event Analysis**

Following the flood event on 16 June 2016, significant analysis has been undertaken to ensure that the computer model used as the basis for the flood alleviation plans is robust. The storm has been re-created based on local rain gauge records and then applied to the model to replicate the June event. Flood extents and depths have been verified.

The same event has been simulated with the flood alleviation proposals included, to ensure that the scheme would have prevented the spill of flood water from the Bourn Brook onto the Pershore Road and into the Avenues that ultimately resulted in flooding to properties. It should be noted that the flood alleviation scheme has been designed to deal with flood events larger than those witnessed in 2008 and 2016.

The use of highly detailed computer models is standard for both the assessment of flood risk and the design of alleviation schemes. The model in this location has been calibrated and verified against previous flood events and accurately reflects flooding dynamics in this area.

#### **Previous Work**

The Environment Agency have undertaken no flood alleviation works in the Bourn Brook catchment. Previous works at Harborne Lane were undertaken to provide compensatory storage for development plots on the old Battery site. Whilst these works will have satisfied development requirements, they were never designed to deal with flooding at a catchment scale. The works proposed as part of this



**Environment  
Agency**



scheme will substantially increase the volume of available storage, resulting in a significant decrease in flood risk across the Bourn Brook catchment.

### **Funding**

Changes to government funding in 2011, mean most flood defence schemes attract a percentage of capital money relative to the benefits proposed. However, external funding must also be sought to secure government funds and reach the total required. The scheme that has been developed is currently estimated at £4.3 million. Partnership discussions have resulted in a significant proportion of the costs being taken on by Calthorpe Estates, with an agreement of around £2 million in kind and direct cash contributions. Other public funding sources have been investigated but are not sufficient to close the identified funding gap.

Based on discussions with local planning officers there are no other large developments earmarked within the Local Plan, in this catchment, that will be able to provide the funding required to deliver a scheme for the community of Selly Park north and Selly Oak. It should also be noted that the Pebble Mill site is integral to a flood risk management solution, with the development proposals being designed to enable the alleviation works.

### **Conclusion**

The Selly Park north scheme offers a unique opportunity to reduce flood risk and provide environmental and amenity enhancements for the Selly Park and Selly Oak area of South Birmingham. By working together to deliver multiple outcomes, the Environment Agency, and members of the Rea Catchment Partnership, have been able to secure a substantial monetary and land contribution, without which a scheme in this location would simply not be possible. Birmingham City Council's horizon scanning analysis has confirmed that this is likely to be the only large scale development in this area for the coming years and as such is an opportunity that we cannot afford to miss.

### **Key Headlines**

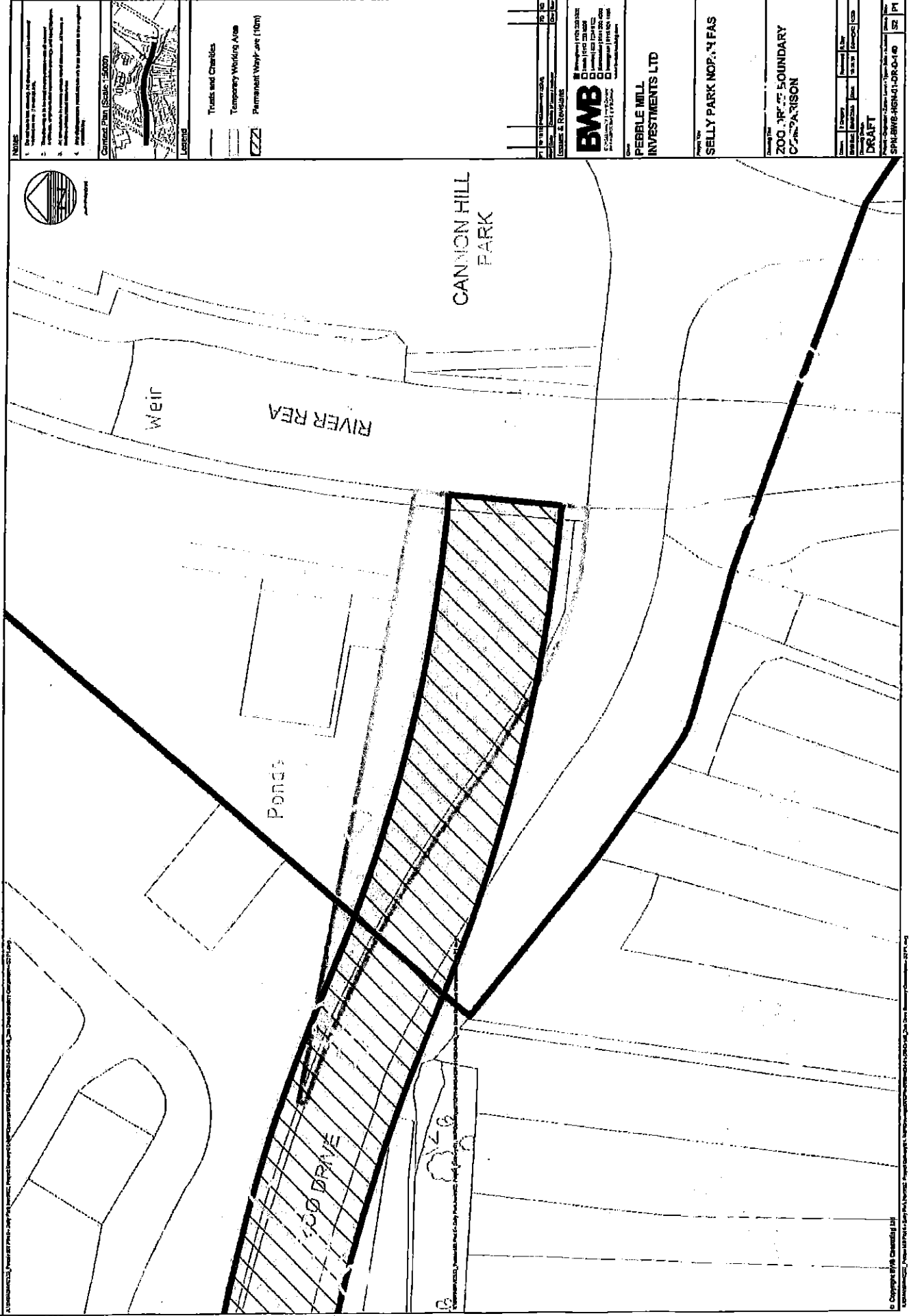
- 150 homes will benefit from the proposed flood alleviation works
- Key highway routes and infrastructure will be protected from the Bourn Brook, helping to maintain vital transport and emergency routes
- A scheme is only possible if works within the Pebble Mill site are delivered
- Development on the Pebble Mill site will enable these works and release the additional funding required to deliver flood risk improvements for these communities
- Without use of the Pebble Mill site and a significant level of external contributions a flood alleviation scheme in this area will not be possible











NOTES

1. The proposed road layout is shown in the hatched area.
2. The proposed road layout is shown in the hatched area.
3. The proposed road layout is shown in the hatched area.
4. The proposed road layout is shown in the hatched area.

Context Plan (Scale: 1:5000)



Legend

- Trunk and Charities
- Temporary Working Area
- Permanent Working Area (10m)

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**PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>ACTING STRATEGIC DIRECTOR OF PLACE</b>
<b>Date of Decision:</b>	<b>14<sup>th</sup> DECEMBER 2016</b>
<b>SUBJECT:</b>	<b>GEORGE CADBURY FOR PUBLIC PARK (KNOWN LOCALLY AS "MANOR FARM PARK") – SAFEGUARDING THE CADBURY BARN</b>
<b>Wards affected:</b>	<b>Weoley</b>

**1. Purpose of report:**

To seek approval to undertake appropriate processes to advance changes on the Trust land to better safeguard the Cadbury Barn.

**2. Decision(s) recommended:**

That the Committee

- 2.1 notes the completion of the Options Appraisal by Birmingham Conservation Trust (BCT) and that the preferred option from the stakeholders public meeting proposes to release part of the depot land.
- 2.2 notes that the George Cadbury for Public Park trust does not have sufficient funds nor powers to effect these changes.
- 2.3 acknowledges the intention by the Acting Strategic Director of Place to declare a substantial part of the current Depot surplus to requirements to enable change subject to any disposal also reinstating some essential depot facilities that will be lost.
- 2.4 agrees that applications for external funding can be made by the City Council, BCT or others in support of the proposals and subject to compliance with the provisions of the Charities Act 2011 to accept any terms and conditions including possible legal charges
- 2.5 notes that the land held in trust is designated or 'specie' land which means its use is restricted to public open space and agrees that, in consultation with the Chairman, an application to seek an Order and/or Scheme from the Charity Commission under the Charities Act to empower the trust to effect the proposed changes and in due course to undertake disposals. subject to compliance with the Charities Act 2011 and to the satisfactory conclusion of necessary public consultation agrees that the proposals for the land declared surplus should continue to be developed and the surplus properties marketed with the expectation that changes will assist the funding for the refurbishment and letting of the Cadbury Barn
- 2.6 to recommend to the next available meeting of the Council as Trustee that the matters listed in 2.1 through to 2.6 be approved
- 2.7 That the Director of Property be authorised to negotiate, vary and agree the terms of any disposal of land or other related agreements and to appoint external consultants and valuers as appropriate.
- 2.8 That the Acting City Solicitor be authorised to prepare, negotiate, execute, seal and complete all necessary documentation, including the applications to the Charity Commission to give effect to the above decisions and to place any formal advertisements required under either s123(2A) of the Local Government Act 1972 or various statutes as may relate to the charitable status of the land in securing of more modern powers to better manage the trust land.

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### **3. Compliance Issues:**

#### **3.1 Consultations**

The Options Appraisal has been developed with the Parks District Manager and the 'Friends of Manor Farm Park' who support the proposals. The Acting Strategic Director of Place and local Ward Members for Weoley are supportive of the proposals advancing. Manor Farm Park depot area is held in trust and it is appropriate that the matter be considered via the Trusts & Charities Committee once officers in the Parks Service have considered all practical issues.

#### **3.2 Relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?**

The City Council acts as Sole Trustee for a number of Trusts and has delegated this role to the Trusts and Charities Committee with the Full Council sitting as 'Council as Trustee' being the approving body for major changes to the trust land. Charitable trust activity is regulated by the Charity Commission and governed by the Trust document as amended by any Scheme approved by the Charity Commission.

George Cadbury for Public Park is the registered charity no. 522859 covering the majority of the modern Manor Farm Park in Northfield. The trust land was gifted to the Council in two parts the first in 1954 through the Will of George Cadbury with the remainder which included the Depot and barns in 1955 being via a land exchange with the Cadbury family on the same terms as the gift via the Will. The Governing Document for the Trust is the Will of George Cadbury proved on 5th February 1923. The original trust deeds require that Birmingham City Council shall hold the land for the provision of public open space for the purposes of healthful recreation but the registered Charity can also undertake general charitable purposes, amateur sport and provide buildings, facilities. All land is 'specie' land being dedicated to open space use even though the Depot area is the house and barns which made up the former Manor Farm complex.

In many cases if the Governing Document does not contain an appropriate power to proceed with a disposal of charity land, the trustees can rely on the statutory power contained in the Trusts of Land and Appointment of Trustees Act 1996. However, this power is not available to Trustees where they are seeking to dispose of designated or 'specie land' which will require an application to the Charity Commission for approval for an Order and/or Scheme to allow for the change of use of the land, and giving a general power of disposal and other appropriate modern powers to enable the more efficient operation of the Park. Disposals include the sale of the freehold but also the grant of leases, licences, wayleaves and easements.

#### **3.3 Finances**

Decisions made by a charity must be expedient in the interests of the charity at all times. Further it is a requirement of the Trustees Act 2000 and the Charities Acts that the Trust achieve best value in any disposal though there are exceptions for this when dealing with other charities. The Trust has no income and any advance of the proposals set out in the Options Appraisal will require either external funding or the release of land and buildings to secure match funding or new occupiers. It is essential that the trust is fully in compliance with Charity Commission requirements if the application is to be successful.

#### **3.4 Public Sector Equality Duty**

None. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime not subject to the Equalities Act 2010 provisions.

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

- 4.1 The modern depot area is formed from the former Victorian farmhouse and barns with additional modern sheds and yard. The Cadbury Barn sits alongside these looking into the Park. It is principally of timber construction and was built in 1894 by George and Elizabeth Cadbury as a shelter and picnic place for children from the inner city areas but is now in poor condition.
- 4.2 The Friends of Manor Farm Park and BCC Parks Service are desirous of its retention and reuse and at the meeting of Trusts & Charities Committee on 13th February 2014 it was agreed to allow the formation of a full Options Appraisal of the Barn and adjoining depot area.
- 4.3 The Options Appraisal has been completed by Birmingham Conservation Trust ("BCT") and Bournville Village Trust Architects ("BVT") working 'at risk' and concludes that all of the options require a consolidation of the depot area to release the older buildings for sympathetic conversion and development and if so the preferred option is for a small mixed development on part of the depot. The release of that part of the trust land would allow it to be used for match-funding to assist the making of applications for external funding and partnership working. If additional funding from bodies such as the Heritage Lottery Fund is forthcoming it would enable the refurbishment and reuse of the Barn for activities and a café and the house and barns released to be converted to offices and residential units.
- 4.4 There are no funds currently available to action any of the options. Applications to external funders or use of s106 monies may impose conditions on the funds which the Trust will need to accept on behalf of the stakeholders.
- 4.5 The Acting Strategic Director of Place is minded to declare parts of the depot surplus to their requirements to assist these proposals. Once declared surplus in principle the Parks service would continue in occupation until the facilities are required for redevelopment. The existing Lodge previously used as offices by parks is vacant and in declining condition and could be released early on for residential use. BCT are willing to continue their involvement in the proposals advance the proposals.
- 4.6 Ultimately, if any of these proposals are to proceed they will require disposals of land and buildings and the grant of occupational leases for the proposed new uses. As the land is 'specie land' and as the existing governing document for the Trust being the Will of George Cadbury from 1923 does not provide existing powers to enable any of those actions it is proposed that an application to secure appropriate new powers be submitted to the Charity Commission to secure a Scheme. The Trust, in any case, should have improved modern powers for the better management of the land and the award of a Scheme will secure these.
- 4.7 The depot provides the sole public car park and toilets for the park but this is not well used with most park users accessing the park on foot or using the designated cycle route. If any of the works proposed proceed there will be temporary interruption of these areas but once resolved those areas with improved facilities will be reopened as a gateway to the Park.

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

- 5.1 To seek to safeguard the Trust's assets and secure an historic legacy. If the application for new powers to the Charity Commission is successful it will ensure the trust can contribute towards the retention of the Cadbury Barn and also arrest the decline in the older building stock at the depot and then create legitimate occupations and demonstrate continuing support for the local community.

**Signatures:**

Chief Officer(s): .....

Chairman .....

Dated .....

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

1. Report to Trusts & Charities Committee on 13th February 2014
2. BCT Options Appraisal – The Cadbury Barn, Manor Farm Park March 2015

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

1. Detailed plan showing layout of the barns
2. Plan of the entire George Cadbury for Public Park Trust



AREA EDGED RED

7201

SQ. METRES APPROX.

8612

SQ. YARDS APPROX.

**Birmingham City Council**

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 Birmingham Property Services  
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**Manor Farm Park  
 Bristol Road South  
 (Options Appraisal)**



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DATE

16/01/2014

O.S.Ref. SP0280NE

**Manor Farm Park  
Bristol Road South  
(George Cadbury)**

Notes

AREA EDGED RED

16.8 HECTARES APPROX.

41.6 ACRES APPROX.

**Birmingham City Council**

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Scale 1:3,000 @ A3

Drawn MI

Date 17/01/2014



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**APPENDIX 2**

