

**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<br/>REGISTRATION NUMBER 1076676 –<br/>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,<br>Birmingham Property Services |
| <b>Telephone No:</b>          | 0121 303 3028                                 |
| <b>E-mail address:</b>        | 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): .....

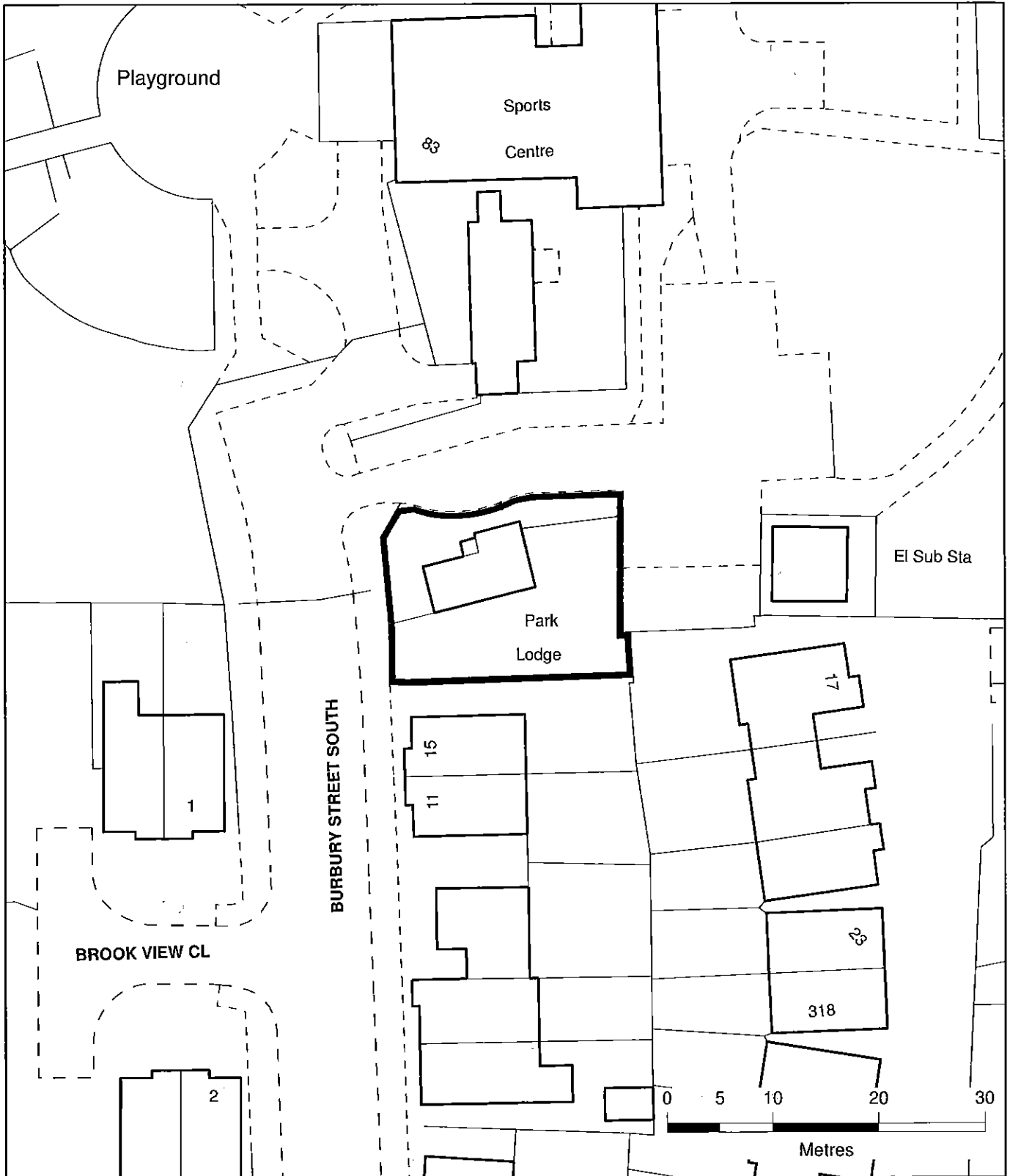
Dated: .....

**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.



AREA EDGED RED 381 SQ. METRES APPROX. 456 SQ. YARDS APPROX.



Peter Jones BSc, FRICS  
Director of Property  
Birmingham Property Services  
PO Box 16255  
Birmingham, B2 2WT

**Burbury Park Lodge  
Burbury Street South  
Lozells**



SCALE

1:500

DRAWN

MI

DATE

09/09/2016

O.S.Ref SP0688NW

**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 CORPORATE FINANCE</b>                     |
| <b>Date of Decision:</b> | <b>9<sup>th</sup> NOVEMBER 2016</b>                      |
| <b>SUBJECT:</b>          | <b>SPARKHILL PARK : CABLE WAYLEAVE TO LEISURE CENTRE</b> |
| <b>Wards affected:</b>   | <b>SPRINGFIELD</b>                                       |

|                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Purpose of report:</b>                                                                                                                                                                                    |
| 1.1 To approve the decision by the Vice Chairman of the Trusts and Charities Committee to allow the installation of a new mains electricity cable across the Park to the new Sparkhill Leisure Centre and Pool. |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>2. Decision(s) recommended:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 2.1 To note the action of the Vice Chairman, in consultation with officers, in agreeing to the grant of a cable wayleave to Western Power Distribution plc to enable a new electricity supply to the Leisure Centre and to delegating to the Director of Property authority to undertake all appropriate actions to negotiate the terms of the wayleave and for the Director of Legal Services to prepare, negotiate, execute, seal and complete all necessary documentation to give effect to the above decisions. |

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

|                         |
|-------------------------|
| <b>Signatures:</b>      |
| Chief Officer(s): ..... |
| Dated:.....             |

|                                                              |
|--------------------------------------------------------------|
| <b>List of Appendices accompanying this Report (if any):</b> |
| 1. Chair's Action report 27 <sup>th</sup> September 2016     |

|                                                         |
|---------------------------------------------------------|
| <b>3. Relevant background/chronology of key events:</b> |
| 3.1 None additional to the attached report.             |

**BIRMINGHAM CITY COUNCIL- TRUSTS AND CHARITIES COMMITTEE**  
**CHAIRS ACTION - SPARKHILL PARK**  
**APPROVAL OF GRANT OF CABLE WAYLEAVE SERVING THE NEW SPARKHILL**  
**LEISURE CENTRE**

|                        |                    |
|------------------------|--------------------|
| <b>Wards affected:</b> | <b>Springfield</b> |
|------------------------|--------------------|

- 1.1 At a meeting of Trusts & Charities Committee on 5<sup>th</sup> December 2012 and at Council as trustee on 4<sup>th</sup> March 2014 approval was given for the rebuilding of the new leisure centre on trust land at Sparkhill Park on the same site as the former Sparkhill Baths.
- 1.2 The existing electrical supply cable is insufficient for the new facility and a new uprated cable is required to be installed from the substation in the Park fronting Stratford Road. Excavation along the existing cable route under Stratford Road is not possible due to the proximity of other utilities and the disruption likely on a major traffic route. The proposed route through the Park has reluctantly been accepted and is the least disruptive route possible avoiding existing parks footpaths and tree roots. Western Power Distribution (West Midlands) plc will undertake the installation which will be documented by a standard Wayleave Agreement negotiated by the Director of Property.
- 1.3 Disruption to the Park will be minimised by the use of lightweight vehicles and continually backfilling as works progress such that there is no overnight exposed excavations. Although a working area 3 metres wide along the whole route is shown on the plans only a small section of the Park will be affected each day. The contractor's activities in the Park will be controlled by the Parks Service.
- 1.4 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 Legal Services. The cost of the adverts will be met by Birmingham City Council through the contract for the main works. The Head of Parks has been consulted and is supportive and has delegated matters to the District Parks Manager.
- 1.5 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 public open space use.
- 1.6 It is proposed to allow the cable installation and grant the wayleave. Unfortunately the approval to the installation cannot await the next meeting of the Committee and the authority of the Chairman is requested to enable the works to proceed. Sparkhill Park is in Springfield Ward and therefore the Vice-Chairman is required to action matters instead.
- 1.7 The Strategic Director of Place seeks the approval of the Vice-Chairman of the Trusts and Charities Committee to enable the cable installation serving the new Sparkhill Leisure Centre to proceed and for the grant of the Wayleave.
- 1.8 That the Director of Property be authorised to negotiate the terms of the proposed Wayleave Agreement and sign the Agreement on behalf of the Trust.
- 1.9 That the Director of Legal Services 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 s.123(a) of the Local Government Act 1972 or various statutes as may relate to the charitable status of the land in the granting of this lease.

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

**Signatures of the relevant Chairman and officers in agreeing to the grant of a cable wayleave agreement over Sparkhill Park to the new Sparkhill Leisure Centre as above:-**

Vice- Chairman of the Trusts and Charities Committee:  
Councillor Mick Finnegan

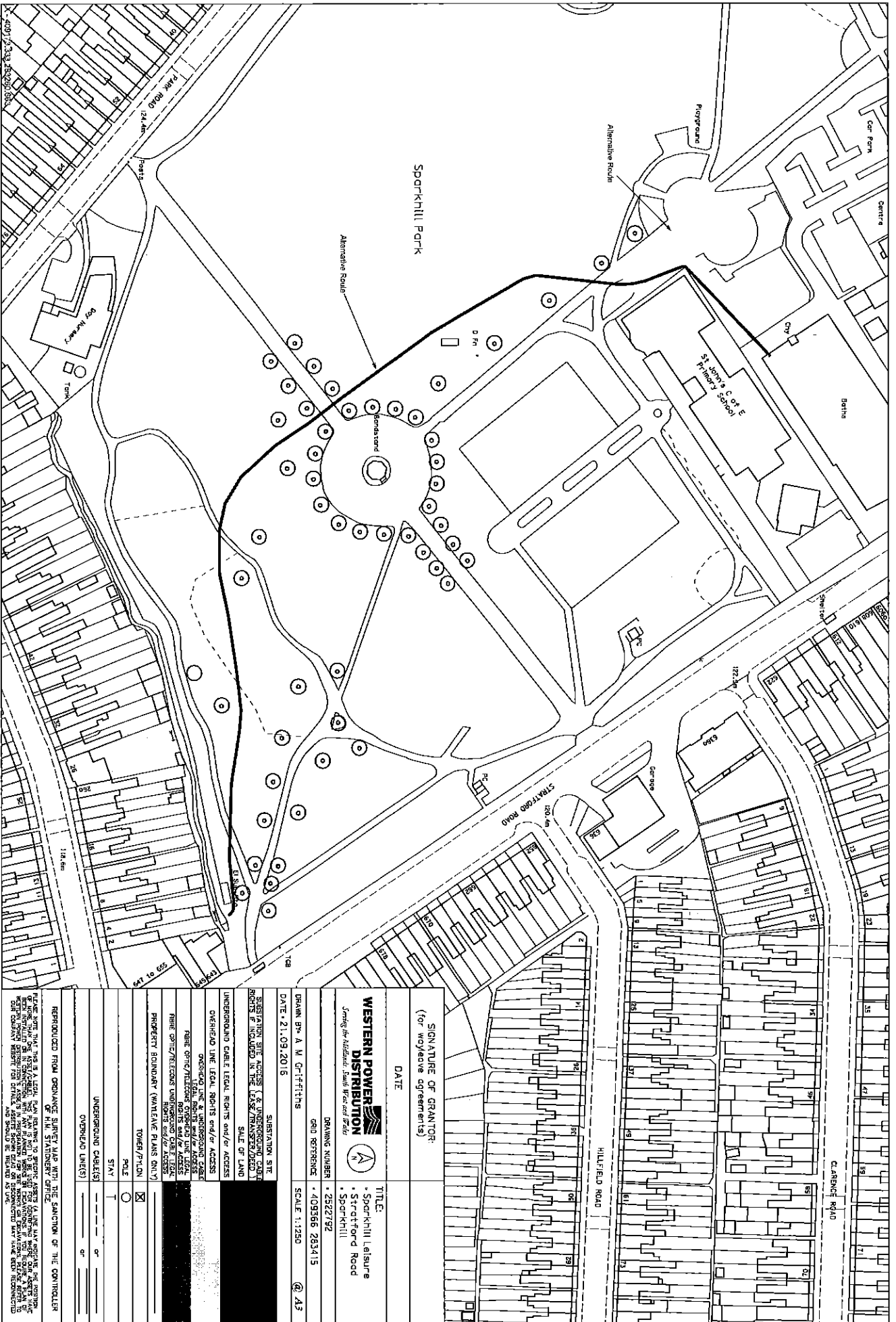
.....

Date: .....

Chief Officer: .....

Date .....

Appendix 1 Wayleave route plan



PLEASE NOTE: This plan only shows assets owned by Western Power Distribution. Electricity assets owned by DNO's (Independent Network Operators) may be present in this area.

SIGNATURE OF GRANTOR:  
(for wayleave agreements)

DATE

**WESTERN POWER DISTRIBUTION**  
*Serving the Midlands, South West and Wales*



TITLE:  
• Sparkhill Leisure  
• Stratford Road  
• Sparkhill

DRAWING NUMBER

• 2522792

GRID REFERENCE

• 409366 263415

DATE: 21.09.2016

DRAWN BY: A. M. Griffiths

SCALE: 1:1250

© A3

SUBSTATION SITE

UNDERGROUND CABLE

LEGAL RIGHTS

ACCESS

RIGHT OF WAY

PROPERTY BOUNDARY

WATER/ELECTRICITY PLANS ONLY

TOWER/FLUON

POLE

STAY

UNDERGROUND CABLES

OVERHEAD LINES

OR

REPRODUCED FROM ORANGE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER

OF H.M. STATIONERY OFFICE.

THIS DRAWING IS THE PROPERTY OF WESTERN POWER DISTRIBUTION AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF WESTERN POWER DISTRIBUTION. ANY UNAUTHORIZED REPRODUCTION OR USE OF THIS DRAWING IS A BREACH OF THE COPYRIGHT AND WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

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

|                                               |                                                                                                                     |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| <b>Report to:</b>                             | <b>TRUSTS AND CHARITIES COMMITTEE</b>                                                                               |
| <b>Report of:</b><br><b>Date of Decision:</b> | <b>DIRECTOR OF PROPERTY</b><br><b>1<sup>st</sup> March 2017</b>                                                     |
| <b>SUBJECT:</b>                               | <b>GRANT OF LEASES OF THE AVENUE AND OF THE SHRUBBERY PICNIC AREA (THE ELFORD ESTATE CHARITY – REG. NO.1000692)</b> |
| <b>Wards affected:</b>                        | <b>OUTSIDE OF THE BIRMINGHAM CITY BOUNDARIES</b>                                                                    |

**1. Purpose of report:**

- 1.1 To consider the request of the Elford Parish Council for the grant of leases of the area in Elford known as The Avenue and of the area in Elford known as The Shrubbery Picnic Area, being part of the Elford Estate held in trust.

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

That Committee:

- 2.1 approve the proposal to grant long lease (expiring up to 14<sup>th</sup> May 2089) to the Elford Parish Council.
- 2.2 approve the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust.
- 2.3 authorises the recommendations of the Trusts and Charities Committee be advanced to a future meeting of the Council as Trustee for approval the report to which will be approved by this Committee first.
- 2.4 authorises the Acting City Solicitor and Monitoring Officer to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation.
- 2.5 authorises the Acting City Solicitor and Monitoring Officer to make any further applications necessary for appropriate powers or approvals from the Charity Commission or other party or body as appropriate to agree to the disposal and to then prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

|                                                |                                                                                                         |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Lead Contact Officer(s):</b>                | Nigel Oliver<br>Birmingham Property Services                                                            |
| <b>Telephone No:</b><br><b>E-mail address:</b> | 0121 303 3028<br><a href="mailto:nigel.g.oliver@birmingham.gov.uk">nigel.g.oliver@birmingham.gov.uk</a> |

### **3. Consultation**

- 3.1 No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the Charities Act 2011. The Elford Estate is outside of the City boundaries and falls within the parishes of Elford and Whittington & Fisherwick and the secretaries of the Parish Councils are informed of works which affect the public areas of the estate.

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

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

N/a. The objects/purposes of the Council's charitable trusts all have a commonality and principally are held for the benefit of the citizens of Birmingham. Actions proposed to any trust property are required to be in the best interests of the trust and are intended to manage the trust estate for the future.

- 4.2 Financial Implications

The property is part of the Trust land and all maintenance duties are the Trust's responsibility. The proposal will remove the majority of obligations from the Trust. There is no income related to this land now or likely in the future. It is noted that any grounds maintenance undertaken on these areas is carried out substantially through volunteer action by local residents already. If granted the terms of the lease indicate a peppercorn rent only for the duration of the lease without review and with each party bearing its own legal and other costs in the formation of the lease.

- 4.3 Legal Implications

Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees in making decisions must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law or give rise to a breach of trust. Trustees have a duty to manage the assets of the charity responsibly. Decisions made by the trustee must be expedient in the interests of the charity at all times. The disposal of trust assets must be in line with appropriate professional advice. All valuation advice conforms to the requirements in Part 7 Charities Act 2011 for the disposition of trust land. The grant of a long lease is a disposal for these purposes.

The City Council is Sole Corporate Trustee of a number of charitable trusts and has delegated day to day management decisions in respect of these trusts to the Trusts and Charities Committee with decisions on other matters being approved at meetings of the Council as Trustee. Proposals for the management of land in trust or of services thereon require robust procedures to safeguard the Trust and the public using it to comply with charity law.

The Elford Estate Charity is formed from a single gift to Birmingham from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692 registered 25 October 1990. As landowner and sole trustee Birmingham City Council is responsible for the management of the Estate.

- 4.4 Public Sector Equality Duty (see separate guidance note)

N/a. 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 determined it is expedient in the interests of the charity to grant a new lease.

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

- 5.1 The part of the Estate known as The Avenue is an area of public open space measuring 0.84 hectares (2.07 acres) and includes the driveway and avenue of trees leading to the Parish church. In previous years it was much used by the village for community functions and while many of these have been moved into the Hall Gardens project it remains a focal point for the village. The Picnic area and car park are alongside the River Tame. Generally these areas are well kept and supported by the residents however the Parish Council have confirmed a desire to have an interest in the land which would allow them to have long term local care of the area.
- 5.2 Each charitable trust is held as a separate trust and decisions need to be in the best interests of that trust. In considering the request for a long lease due consideration must be given to the future management of the estate as a whole. The land has always been public open space since before the transfer of the Elford estate to the City Council. Neither area is developable and would be difficult to use for any other purpose. Therefore the grant of a long lease for a continuation of the existing uses will not be detrimental to the Estate. Few long leases have been granted at Elford but the Elford Parish Council already hold a long lease of the local Cricket Club land which is on a 99 year lease expiring 14<sup>th</sup> May 2089. There have been no matters of concern as a result of entering into a lease with the Parish Council. The advantages of contracting with another local government body are that it will have certainty, longevity, legal standing and sound governance arrangements. It is proposed that any lease granted for the Avenue would be for a period of years up to but not exceeding 14<sup>th</sup> May 2089.
- 5.3 In exchange for the lease the Parish Council are willing to undertake at no cost to the Trust all future maintenance on the land. They are in fact better placed to properly manage the land and public liability and social issues on the land. Appropriate constraints will be placed in the lease to avoid any fundamental change on the land and ensure the Parish Council continue to encourage the general public to use the land responsibly and in so doing enhance the objects of the Elford Trust. Potentially there is also a saving to the Trust. The lease will include responsibility for all grounds maintenance including trees and hedges, the roadway and ornamental gates fronting the Avenue but will not include the Grade 2 listed wall running along the southern boundary which was formally the boundary of the former Elford Hall which was demolished many years ago. The Parish Council will be encouraged to develop a longer term management plan for the land.
- 5.4 **Aims and Objectives of the Charity**  
The Deed of Gift dated 29 September 1936, under which the Elford Estate passed to the City Council requires that the estate should be used for *"the healthy recreation of the inhabitants of the City of Birmingham"*. Further s86(2) West Midlands Act 1980 requires that the City Council preserves, as far as is possible, the rural character of Elford Hall Estate. The grant of the lease will assist and structure local volunteer action in improving the area, foster closer ties with the village and by reducing trust costs assist compliance with the objects of the trust on other parts of the Estate while continuing to preserve the rural character of the Estate.
- 5.5 **Trustee Powers**  
The trust constitution is set out within the executed Trust Deed, principally the acquisition deeds or as amended here by a Scheme of the Charity Commission dated 14 May 1990 which empowers the trust to make disposals of land and property by sale or by lease without further consent from the Charity Commission. All decisions will be mindful of the original intention of the trust however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers also exist for the Trustees to make decisions on the future of the assets including disposal in the Trusts of Land and Appointment of Trustees Act 1996.

## **5.7 Charity Finances**

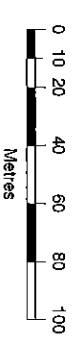
|           |                                                                                                                                                                                                              |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>6.</b> | <b>Evaluation of alternative option(s):</b>                                                                                                                                                                  |
| 6.1       | Do nothing. The Elford Trust will continue to hold the Avenue as public open space and be liable for future maintenance.                                                                                     |
| 6.2       | Grant a lesser term than requested. This is possible but the opportunity should be taken to resolve the management of the land long term for the mutual benefit of the Trust and the local residents.        |
| <b>7.</b> | <b>Reasons for Decision(s):</b>                                                                                                                                                                              |
| 7.1       | To secure legitimate occupation of land and enhance the Trusts support of the local community while reducing costs and also ensuring on-going compliance with and the objects of the Charity for the future. |

|                                              |             |
|----------------------------------------------|-------------|
| <b>Signatures</b>                            | <b>Date</b> |
| Chairman of the Trusts & Charities Committee | .....       |
| Chief Officer                                | .....       |
| Director of Property                         |             |

|                                                                  |  |
|------------------------------------------------------------------|--|
| <b>List of Background Documents used to compile this Report:</b> |  |
| 1. Elford Charity Commission Scheme dated 14 May 1990.           |  |
| <b>List of Appendices accompanying this Report (if any):</b>     |  |
| 1. Proposed Lease Plan.                                          |  |

## Sites At The Avenue & The Shrubbery Elford

## Notes



**AREA EDGED RED**

X SQ METRES APPROX.

X SQ YARDS APPROX



**Peter Jones BSc, FRICS**  
Director of Property  
Birmingham Property Services  
PO Box 16255  
Birmingham B2 2WT

Scale 1:2.500 @A4

Drawn

|      |            |
|------|------------|
| Date | 17/02/2017 |
|------|------------|



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**BIRMINGHAM CITY COUNCIL – Council as Trustee**

**PUBLIC REPORT**

|                                               |                                                                                  |
|-----------------------------------------------|----------------------------------------------------------------------------------|
| <b>Report to:</b>                             | <b>TRUSTS AND CHARITIES COMMITTEE</b>                                            |
| <b>Report of:</b><br><b>Date of Decision:</b> | <b>Director of Property</b><br><b>1<sup>st</sup> March 2017</b>                  |
| <b>SUBJECT:</b>                               | <b>ELFORD ESTATE – DISPOSAL OF LAND AT THE GARDENS ADJOINING THE OLD RECTORY</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 Elford Estate.

**2. Decisions recommended:**

That the Committee

- 2.1 approve the proposal to dispose of the freehold interest of the land identified in Appendix 1.
- 2.2 approve the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust.
- 2.3 authorises the recommendations of the Trusts and Charities Committee be advanced to a future meeting of the Council as Trustee for approval the report to which will be approved by this Committee first.
- 2.4 authorises the Acting City Solicitor and Monitoring Officer to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation.
- 2.5 authorises the Acting City Solicitor and Monitoring Officer to make any further applications necessary for appropriate powers or approvals from the Charity Commission or other party or body as appropriate to agree to the disposal and to then prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

|                                                |                                                   |
|------------------------------------------------|---------------------------------------------------|
| <b>Lead Contact Officers:</b>                  | Nigel Oliver                                      |
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### **3. Compliance:**

#### **3.1 Consultations:**

No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the Charities Act 2011. The Elford Estate is outside of the City boundaries and falls within the parishes of Elford and Whittington & Fisherwick and the secretaries of the Parish Councils are informed of works which affect the public areas of the estate.

#### **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 charity's Trust document as amended by any Scheme approved by the Charity Commission.

The Elford Estate Trust holds the freehold interest of the land in trust as Sole Trustee. Actions proposed are required to be in the best interests of the trust and are intended to preserve the trust estate for the future. 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 Elford Estate Charity Commission Scheme dated 14<sup>th</sup> May 1990 establishing the regulation of the Charity also provides appropriate powers for the disposal of assets by sale or for lease without further approval by the Charity Commission provided such disposals are 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 Elford Estate.

#### **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 and purposes 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. Bruton Knowles are appointed to assist the management of the Estate and have provided valuation advice.

The land is isolated garden land and never been open to public access. It currently produces neither rent nor costs and has no development value or alternative use other than as additional garden to the Old Rectory. The removal of this land from estate ownership is not detrimental to the estate but removes an area of land not easily managed or safeguarded.

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

N/A. 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 determined it is expedient in the interests of the charity to act.

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

- 4.1 The Elford Estate Charity is formed from a single gift to Birmingham from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692 registered 25 October 1990.
- 4.2 The proposal to dispose is appropriate as the land can no longer effectively assist the delivery of the Objects of the Charity. The objects of the charity as set out in paragraph 4.5 are wide ranging but the inaccessibility of this land has always meant it is not used by the public and a proposal to dispose would enable the property to continue to be open garden land and still satisfy the Object of preserving the rural nature of the estate. 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.
- 4.3 In considering the request for a disposal of the land due consideration must be given to the future management of the estate as a whole. The land has no independent access being positioned behind a Grade 2 Listed wall that formerly bounded the Elford Hall. The Hall was demolished in the mid 1960's and areas of land there disposed of in plots in 1980. Investigation with the local planning authority confirms there is no development opportunity and therefore the disposal of the land appears not to be detrimental to the Estate.
- 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 property is detached from the remainder of the Estate although adjoining a small area of woodland retained by the Trust.

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

Each charitable asset is held as a separate trust and decisions need to be in the best interests of that trust. The objects of the Elford Estate Charity are 'the promotion of the healthy recreation of the inhabitants of the City of Birmingham' and 'the preservation of the rural nature of the estate'. The disposal of this land creates a capital receipt to the Trust while the nature of the land remains unchanged and continues to support the Objects of the Charity.

#### **4.6 Trustee Powers**

The charity's constitution is set out within the executed Trust Deed, 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 also exist for the Trustees to make decisions on the future of the assets as set out within paragraph 3.2 above.

#### **4.7 Charity Finances**

Formal accounts are required to be prepared for the Charity Commission returns where appropriate. The Trust has a strong revenue stream principally from the letting of the main land holding comprised in Home Farm plus other smaller lettings.

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

- 5.1 To do nothing is not an appropriate option. It is appropriate that the land not capable of being open to the public should be leased or disposed of. Disposal is considered the most appropriate manner to maximise the benefit to the Estate as the land would still need to be managed.

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

- 6.1 To secure legitimate occupation of land while also ensuring on-going compliance with and the objects and purposes of the Charity for the future.

**Signatures****Date**

Chairman of the Trusts &amp; Charities Committee

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Chief Officer  
Director of Property

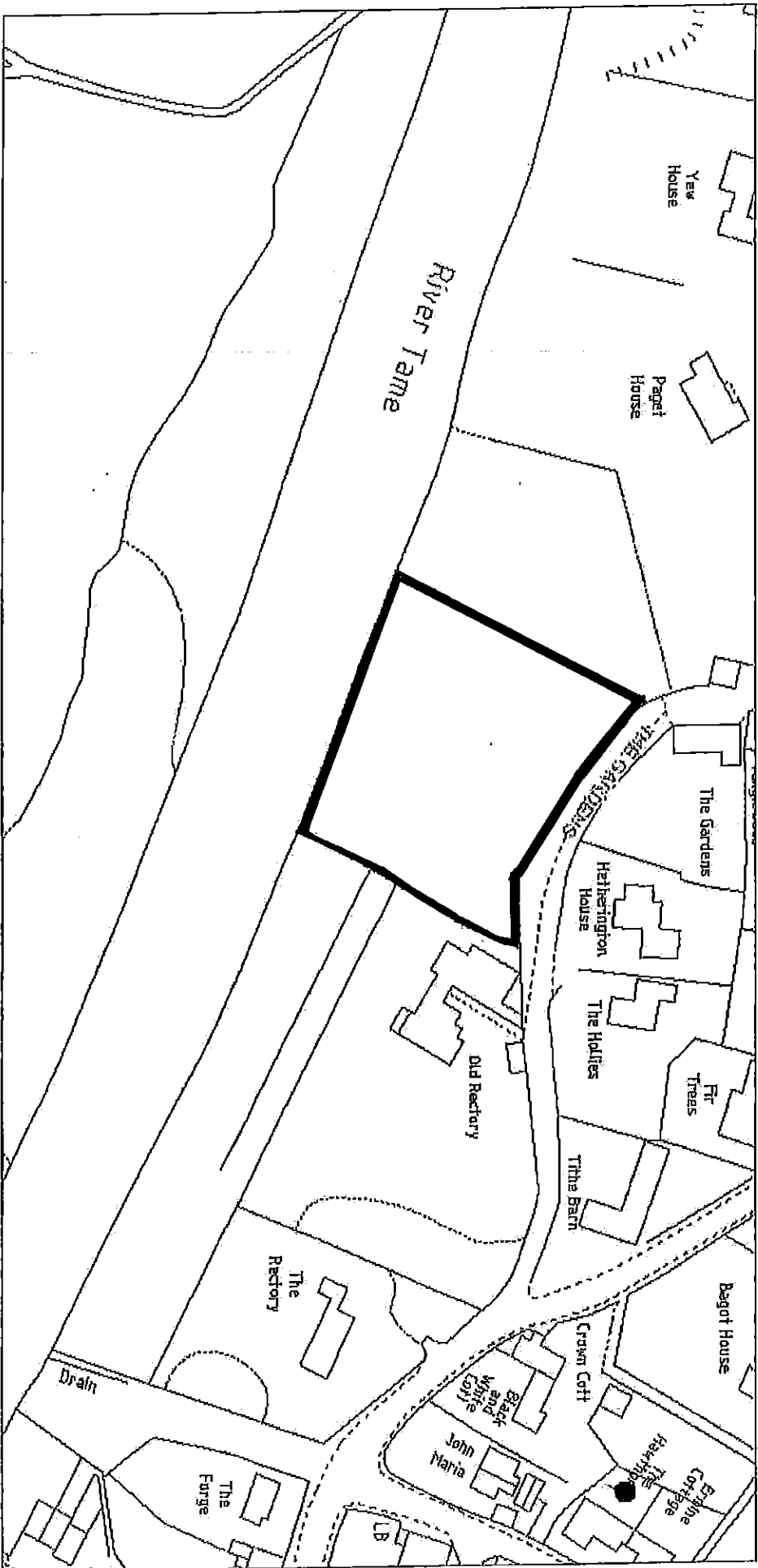
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**List of Background Documents used to compile this Report:**

1. Elford Charity Commission Scheme dated 14 May 1990.

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

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



**Birmingham City Council**

Map Created By:  
Date of Map Creation: 27/10/2014

Map Notes

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1:1,250