

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

TRUSTS AND CHARITIES COMMITTEE

WEDNESDAY, 20 APRIL 2016 AT 10:30 HOURS
IN COMMITTEE ROOM 2, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 **NOTICE OF RECORDING**

Chairman to advise meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 **APOLOGIES**

To receive any apologies.

3 **MINUTES**

5 - 10

To note Part 1 of Minutes of the last meeting of Committee on 2 March 2016

4 **MATTERS ARISING**

To discuss matters arising.

5 **DECLARATIONS OF INTERESTS**

Members are reminded that they must declare all relevant pecuniary interests and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

6 **REVENUE BUDGET MONITORING 2015/16 - QUARTER 3 (TO 31 DECEMBER 2015)**

11 - 16

Report of the Strategic Director - Finance and Legal Services

17 - 20

7 **CROPWOOD TRUST - THE STABLES, SPIREHOUSE LANE,
BLACKWELL, BROMSGROVE**

Report of the Interim Executive Director for Education

8 **HIGHBURY TRUST**

Verbal Update from the Chairman and/or officers

21 - 28

9 **SURRENDER AND RENEWAL OF LEASE AT 187 HARBORNE LANE
(SELLY OAK PARK REGISTERED CHARITY NO 522877)**

Item Description

29 - 34

10 **TRUSTS & CHARITIES COMMITTEE - APPOINTMENTS PROTOCOL
PANEL**

Item for Noting

35 - 36

11 **SCHEDULE OF OUTSTANDING MINUTES**

To consider outstanding Minutes

12 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

13 **AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

14 **EXCLUSION OF THE PUBLIC**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Minutes - Exempt Paragraph 3

Item 17 - Exempt Paragraph 3

PRIVATE AGENDA

15 **MINUTES (PRIVATE)**

Item Description

16 **MATTERS ARISING - PRIVATE**

To discuss matters arising.

17 **SURRENDER AND RENEWAL OF LEASE AT 187 HARBORNE LANE
(SELLY OAK PARK REGISTERED CHARITY NO 522877) (PRIVATE)**

Item Description

18 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

BIRMINGHAM CITY COUNCIL

TRUSTS AND CHARITIES COMMITTEE 2 MARCH 2016
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PRESENT: Councillor Phil Davis in the Chair

Committee Members:
Councillor John Alden (JA)
Councillor Paul Tilsley (PT)
Councillor Hendrinna Quinnen
Councillor Ian Pears

Officers:
Sanjeev Bhopal, (SKB) Senior Solicitor, Legal & Democratic Services, Rahema Begum (RB), Legal & Democratic Services, Nigel G Oliver (NGO), Property Manager, BPS.

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NOTICE OF RECORDING & PRELIMINARY MATTERS

Cllr Alden raised his concerns about not following the statutory time limit for being advised of the meeting and receiving the agenda 5 clear days of the meeting. Therefore the members could not proceed with the meeting. However they could agree to waive the statutory notice limit if they were all in agreement. Cllr Pears also seconded this.

The Chairman asked for the legal position on this and that if everyone was in agreement then could resolve to continue with the meeting. SKB advised that Cllr Alden was correct with regards to the statutory guidance as contained in the Local government Act 1972 and members could waive this provision if they felt appropriate to do so. SKB apologised for the delay in the send out of committee papers and stated that he takes full responsibility for the delay. The reasons were due to work pressures which resulted in not being able to carry out this function in addition to the other work on hand. The Chairman interceded on this point and stated that there is a real wider issue about support to T&C committee and that it has not had committee support from committee secretariat for several years and will be speaking to the leader.

The committee resolved to agree to waive the statutory notice period on this occasion.

Cllr Pears commented that due to the light agenda he would not have minded to have had the meeting cancelled. The Chairman stated that he wanted to have the meeting to discuss the issue on Highbury surrounding the new appointed shadow trust and that it may be a short meeting but was important to go ahead with it

Cllr Tilsley commented that this is a statutory committee and BCC has a responsibility to ensure that this committee is resourced.

The Chairman thanked members for agreeing to the waiver and he invited members to email senior officers in support, urging them to sort out proper resourcing for the administration of the Committee.

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APOLOGIES

Apologies for non-attendance were submitted on behalf of:

Councillor Matthew Gregson
Councillor Ansar Ali Khan
Councillor Cruise
Mark Szurminski

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MINUTES

The public minutes of the meeting of the last meeting of Committee on the 20 January 2016, were confirmed as an accurate record.

There was an error on the recording of apology for Cllr Tilsley as he is down on the minutes as in attendance as well as apologies received. RB to check the signing in register of the meeting and clarify this.

The chairman provided an update on the proposed Highbury cycle route and that he had received an email from Mr Les Sparks (Chair of the Chamberlain Highbury Trust).

Cllr Alden commented that he had raised a query at minute 782, as to how much was being paid and asked whether this was checked. SKB stated that Mohammed Majid would be asked to clarify this point.

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MATTERS ARISING

Councillor Pears raised question with regards to Elford and whether an update was available. The Chairman advised that the Chairman from the Parish Council has been in touch and is arranging a meeting to discuss the issue in relation to the storage lagoon at home farm.

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DECLARATIONS OF INTERESTS

The Chairman reminded Members that they must declare all relevant pecuniary interests and/or non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest is declared a Member must leave the room or Chamber where the meeting is being held, unless a dispensation has been obtained from the Authority's Standards Committee. Any declarations or leaving of the room/chamber will be recorded in the minutes of the meeting.

None were declared.

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APPOINTMENTS TO OUTSIDE ORGANISATIONS RELEVANT TO THE

WORK OF THE TRUSTS AND CHARITIES COMMITTEE

The Chair had agreed with the Leadership that TCC investigate a possible role as an appointing committee for certain relevant charities, in order to improve City responses to these. Currently all appointments went to Cabinet. TCC could approve a protocol for a limited number of appointments and identify which charities it might appoint to. This would be timely as it had recently been approached by the Birmingham Conservation Trust to see if it could nominate. Equally, a result of the creation of the new Highbury Trust Board, appointments had to be made by TCC. Reviewing the appointments process could involve discussion with other regulatory committees (e.g. Planning Committee).

RESOLVED:

Committee agreed that the Chair and Cllrs Tilsley and Alden would meet to consider the issues and report back.

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SAREHOLE MILL IN TRUST – DISPOSAL TO BIRMINGHAM MUSEUMS TRUST

Nigel Oliver (NGO), Property Manager, Birmingham Property Services, presented the report for the approval of the renewal of the lease of Sarehole Mill to Birmingham Museum Trust as part of the renewal of the contract to operate the Museums and Heritage Services. It would be a long term lease, for a period of 25 years.

RESOLVED:

Committee resolved to approve the report

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HIGHBURY TRUST

The report was tabled at the meeting. The Chairman and SKB presented the report and advised that officers had met with the shadow board and are making good progress. There are no fundamental issues, but would like a timetable of actions by July 2016. SKB advised that the board were seeking their own independent legal advice with a view to setting up a company by the end of April 2016. The Chairman advised that the board are to provide a report to the council as trustee in June/July 2016, but this timetable may slip.

Councillor Alden commented that it would be good for them to get this going and queried about the lease at peppercorn rate. NGO advised that the capital sum had a number of conditions attached to it. Members then discussed issues around financial and legal set up of the board.

The Chairman advised that there were 2 Board places for BCC nominees, which included a nomination from the ward members. The appointment is for a three year initial term and could change. The report is proposing the Chairman and Councillor Trickett as nominees.

Councillor Alden commented that the Council may want to appoint for a number of years so as to safeguard that someone is always in place.

RESOLVED:

Page 7 of 36

Committee resolved the appointments.

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SCHEDULE OF OUTSTANDING MINUTES

No update available

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OTHER URGENT BUSINESS

Councillor Alden advised that cabinet had passed a decision on Cofton Park and wanted to know if the committee had been informed of the Council's proposal. The Chairman advised that he was not aware of any and that he would need to make enquiries.

Councillor Alden also advised that the budget paper had proposed parking charges at Cannon Hill Park and Lickey Hills and asked if any discussions were had around this change. The Chairman stated that he was aware of the proposal but again no discussions had been had with the committee and stated that we should be consulted on when decisions are being made on trust land.

Councillor Tilsley commented that the charges from any trust land should be paid to the relevant Charity and not BCC.

Councillor Quinnen commented that matters about trust land should be brought to this committee and asked whether it was possible for these matters to be brought back. The Chairman agreed and stated that he would discuss this with the leader and get the information.

SKB suggested that Parks and Gardens officers could be asked to review the delegation authority. Councillor Alden commented that this was an excellent idea and would be good to review Smallheath Park as a starter. As well as Cannon hill, Lickey Hills and Rectory Park. Also Edgbaston reservoir as there is a proposal to introduce charges and research around what land is held in trust would be useful.

The Chairman thanked Members for their attendance.

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AUTHORITY TO CHAIRMAN AND OFFICERS

Chairman to move:-

"That the Chairman is hereby authorised to act until the next meeting of the Committee except that, in respect of the exercise of the Council's non-Executive functions, the appropriate Chief Officers are hereby authorised to act in consultation with the Chairman and that the Director of Legal and Democratic Services is authorised to affix the Corporate Seal to any document necessary to give effect to a decision of the said officers acting in pursuance of the power hereby delegated to them; further that a report of all action taken under this authority be submitted to the next meeting and that such report shall explain why this authority is used".

EXCLUSION OF THE PUBLIC

That in view of the nature of the business to be transacted which includes exempt information of the category indicated, the public be now excluded from the meeting.

Minutes of the last meeting

Exempt information paragraph 3

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Cllr Philip Davis
Chairman of Trusts and Charities Committee

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUST AND CHARITIES COMMITTEE	<i>Exempt information paragraph number – if private report:</i>
Report of:	Strategic Director – Finance and Legal Services, Corporate	
Date of Decision:	20 April 2016	
SUBJECT:	REVENUE BUDGET MONITORING 2015/16 - QUARTER 3 (TO 31 DECEMBER 2015)	
Key Decision: Yes / No	Relevant Forward Plan Ref: No	
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):	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	All	

1. Purpose of report:
1.1 This report sets out the income and expenditure position for Trusts and Charities as at Quarter 3, (up to 31 December 2015).

2. Decision(s) recommended:
2.1 Committee note the latest income and expenditure position of Trusts and Charities as at 31 December 2015.

Lead Contact Officer(s):	Mark Szurminski
Telephone No:	0121 675 0482
E-mail address:	Mark_szurminski@birmingham.gov.uk

3.	Consultation
	Consultation should include those that have an interest in the decisions recommended
3.1	<u>Internal</u> The Chairman of the Committee has been consulted in the preparation of this report.
3.2	<u>External</u> n/a
4.	Compliance Issues:
4.1	<u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u> n/a
4.2	<u>Financial Implications</u> <u>(Will decisions be carried out within existing finance and Resources?)</u> n/a
4.3	<u>Legal Implications</u> That the Director of Finance 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 s122(a) of the Local Government Act 1972 or various statutes as may relate to the charitable status of the assets held.
4.4	<u>Public Sector Equality Duty (see separate guidance note)</u> 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 Historically assets including cash have been bequeathed to the City Council in trust. The City Council holds the funds in ring fenced accounts separate to the City Council's resources. Each charitable trust has its own objects / purposes and it is the responsibility of the City Council as sole corporate trustee through the Trusts and Committee to ensure that the objects / purposes of each Charitable trust are achieved and /or complied with in accordance with charity law.
- 5.2 Trust accounts are prepared on an annual basis and are required to be forwarded to the Charity Commission no later than ten months after the end of the trusts financial year.
- 5.3 This is the third report in the quarterly series for 2015/16. The information provided in Appendix 2 identifies income and expenditure for the period ending 31st December 2015.

6. Evaluation of alternative option(s):

- 6.1 Alternative options are not appropriate for this report.

7. Reasons for Decision(s):

- 7.1 To ensure the Committee is aware of the current financial position for Trusts and Charities.

Signatures

Date

Strategic Director of Finance &
Legal Services, Corporate

Chairman

List of Background Documents used to compile this Report:

1. Information provided by Directorates'.

List of Appendices accompanying this Report :

1. Detailed Budget Changes and Forecasts
2. Quarter 3 Position 2015-16 Trust Funds.

1. Income & Expenditure Report Quarter 3, 2015/16

- 1.1. No budgets are held on the Trusts' income and expenditure accounts. The financial information provided relates to balances brought forward from previous years and in year movements in expenditure and income.

2. In year Revenue Budget Monitoring and Forecast Outturn 2014/15

- 2.1. The closing balance as at 30 September 2015 was confirmed as £27.430m. At the end of Quarter 3 (up to 31 December 2015), expenditure totalled £0.066m, income £0.117m and gains on investments was £0.093m which identifies a closing balance of £27.574m.
- 2.2. An analysis of income and expenditure for each Trust Fund is shown at Appendix 2.

2015/16 Trust Funds Balances - Quarter 3

Scheme	Directorate	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
		Opening Balance 1.10.15	Income Quarter 3	Expend Quarter 3	Investments Gains (+) Losses (-)	Closing Balance 31.12.15	Unrestricted Funds Analysis				Restricted Funds Analysis			
							Cash	Investments	Land & Buildings	Total	Cash	Investments	Land & Buildings	Total
							£	£	£	£	£	£	£	£
<u>Sole Corporate Trustee</u>														
Harriet Louisa Loxton Trust	People	1,683,910	12,226	703	0	1,695,433	192,489	29,595	0	222,084	0	1,473,350	0	1,473,350
Cropwood	People	14,722,262	2,242	0	8,904	14,733,408	64,516	0	0	64,516	0	218,893	14,450,000	14,668,893
LA Jones	Place	72,546	734	317	0	72,963	0	72,963	0	72,963	0	0	0	0
Charles Baker Trust	Place	252,611	1,235	493	0	253,353	0	189,206	0	189,206	0	8,147	56,000	64,147
Elford	Place	3,172,899	33,026	1,583	34,542	3,238,884	31,443	29,060		60,503		828,381	2,350,000	3,178,381
Highbury Trust	Economy	1,957,950	4,829	4,829	0	1,957,950	0	0	0	0	0	152,950	1,805,000	1,957,950
Birmingham Municipal Charity	Economy	351,291	3,480	0	0	354,771	18,055		0	18,055	0	336,716	0	336,716
Centre for the Child	Economy	41,123	81	339	0	40,865	4,690	36,175	0	40,865	0	0	0	0
Sub-Total Sole Corporate Trustee		22,254,592	57,853	8,264	43,446	22,347,627	311,193	356,999	0	668,192	0	3,018,437	18,661,000	21,679,437
<u>Custodian Trustee</u>														
Clara Martineau	People	3,622,317	193	0	22,887	3,645,397	367,232	0	0	367,232	0	3,278,164	0	3,278,164
Bodenham	People	579,963	5,970	4,200	31,965	613,698	27,204	0	0	27,204	0	586,494	0	586,494
CB & AB Holinsworth Fund of Help	People	196,985	0	0	(2,167)	194,818	25,956	0	0	25,956	0	168,863	0	168,863
Jane Kate Gilbert	People	37,483	347	0	429	38,259	3,771	0	0	3,771	0	34,488	0	34,488
Alderson	Place	344,589	30,069	30,069	0	344,589	0	93,595	243,184	336,779	0	0	7,810	7,810
Moseley Road Friends Institute	Place	230,301	5,742	19,335	0	216,708	0	0	0	0	(25,093)		241,800	216,707
Lord Mayor of Birmingham's Charity	Economy	125,002	16,630	3,991	(3,058)	134,583	103,940			103,940		30,643		30,643
Sir Whitworth Wallis	Economy	36,847	342	0	(851)	36,337	1,627			1,627		34,710		34,710
John Billingsley the Elder	Economy	2,111	0	0	0	2,111	2,111	0		2,111				0
Sub-Total Custodian Trustee		5,175,598	59,292	57,595	49,204	5,226,500	531,841	93,595	243,184	868,620	(25,093)	4,133,362	249,610	4,357,879
Total		27,430,190	117,145	65,859	92,650	27,574,127	843,034	450,594	243,184	1,536,812	(25,093)	7,151,799	18,910,610	26,037,316

BIRMINGHAM CITY COUNCIL - "COUNCIL AS TRUSTEE"

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Interim Executive Director for Education
Date of Decision:	20th April 2016
SUBJECT:	CROPWOOD TRUST – THE STABLES, SPIREHOUSE LANE, BLACKWELL, BROMSGROVE, B60 1QE
Key Decision: No	Relevant Forward Plan Ref: N/A
If not in the Forward Plan: (please "tick" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member:	N/A
Relevant O&S Chairman:	N/A
Wards affected:	Outside Birmingham

1. Purpose of report:

- 1.1 To update the Committee on matters relating to The Stables, which is part of the Cropwood Estate, Registered Charity No. 1085296.
- 1.2 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:

- 2.1 To approve the incorporation of The Stables building into the general Cropwood portfolio of buildings currently occupied by Hunters Hill School, thus enabling the school to start re-providing outdoor learning education which meets the objectives of the Charity.
- 2.2 To instruct officers in Legal Services and Corporate Finance to take all necessary steps to facilitate the transfer of The Stables to the general Cropwood portfolio of school buildings.

Lead Contact Officer(s):	Jaswinder Didially Head of Education Infrastructure
Telephone No:	07825 117334
E-mail address:	jaswinder.didially@birmingham.gov.uk

<p>3. Consultation</p> <p><u>Internal</u></p> <p>Councillor Brigid Jones, the Cabinet Member for Children’s Services, and The Chairman of the Committee were consulted on the preparation of this report.</p> <p><u>External</u></p> <p>N/A</p>
<p>4. Compliance Issues</p> <p>4.1 <u>Are the recommended decisions consistent with the Council’s policies, plans and strategies?</u></p> <p>The objects/purposes of the Council’s charitable trusts, all have a commonality, namely for the benefit of the citizens of Birmingham. This is consistent with the Council’s Policies, Plans and Strategies which are focused on “fair, democratic and prosperous Birmingham.” 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.</p> <p>4.2 <u>Financial Implications</u></p> <p>See paragraph 5.7.</p> <p>4.3 <u>Legal Implications</u></p> <p>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, 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 gives 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 charity must be expedient in the interests of the charity at all times. The main area of land comprising the Cropwood Estate was gifted to the City by Barrow Cadbury and Mrs Geraldine S Cadbury on 1st June 1921 with a further parcel gifted on 20th May 1938 and is approximately 35 hectares. Land not directly used by the school is let on an agricultural tenancy. The trust is governed by a scheme dated 12th November 1997.</p> <p>4.4 <u>Public Sector Equality Duty</u></p> <p>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.</p>
<p>5. Relevant background/chronology of key events:</p> <p>5.1 On 17th March 2014 Cabinet approved the decision to decommission Birmingham City Council’s Outdoor Education Service (OED). The Outdoor Education Service had used some of the buildings on the Cropwood Estate, which is part of the Cropwood Trust, known as The Stables.</p> <p>5.2 Following the closure of OED The Stables was mothballed and Hunters Hill Special School (which is situated opposite The Stables) has managed the empty building on</p>

behalf of Birmingham City Council Education Infrastructure to ensure that the building did not deteriorate or become subject to vandalism.

- 5.3 Hunters Hill is a secondary school for pupils with social, emotional and mental health issues. The school has always played a major part in providing Outdoor Education at The Stables, thus building up their expertise in this particular area.
- 5.4 Recognising the valuable nature of the services that were provided from The Stables for Birmingham pupils, particularly those with a higher level of needs, Hunters Hill School has expressed an interest in re-establishing the outdoor education facility operating from The Stables and to start re-providing a wide range of outside learning opportunities. These would include traditional outdoor adventure activities and camping. In addition the School wish to develop the fields and space adjacent to The Stables to accommodate a range of animal and horticultural programmes as part of a Land Based Studies programme offering academic, vocational and therapeutic benefit for both primary and secondary age children.
- 5.5 Hunters Hill School's Business Case not only renews an important part of Birmingham pupils' education through providing outdoor learning but also plans to extend the offer by becoming a base for a Forest School and would start to run programmes to follow therapeutic wilderness activities in the grounds.
- 5.6 Hunters Hill School propose to develop a sustainable Business Plan that would allow them to open these programmes to all schools in Birmingham and neighbouring authorities, thus allowing the original Cropwood Trust Deed of Gift to be fulfilled - which is essentially that the building, its resources and its environment are there for the benefit and enjoyment of the children of Birmingham.
- 5.7 Hunters Hill School would become responsible for all running costs associated with The Stables. At the present moment minimal running costs e.g. gas, electricity, rates etc. are being funded by the Education Infrastructure Department.
- 5.8 Education Infrastructure fully support Hunters Hill School in this venture and subject to the Trust and Charities Committee agreement, Hunters Hill School is prepared to accept responsibility for The Stables with immediate effect with a view to bringing the building back into use.

6. Evaluation of alternative option(s):

- 6.1 If the Committee determine not to allow Hunters Hill School to use The Stables for outdoor activities, the building will continue to be mothballed and over time the fabric of the building will inevitably start to deteriorate.

7. Reasons for Decision(s):

- 7.1 To approve the awarding of a lease to Hunters Hill School to allow them to occupy The Stables and to start re-providing a wide range of outside learning opportunities.

Signatures:

Chairman of the Trusts & Charities Committee

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Date:

Chief Officer, Legal and Democratic Services

..... Date:

List of Background Documents used to compile this Report:
None

List of Appendices accompanying this Report (if any):
The Stables Estate Site Plan

Report Version	V2	Dated	07/04/16
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Report to:	TRUSTS AND CHARITIES COMMITTEE	
Report of: Date of Decision:	Director of Property 20 April 2016	
SUBJECT:	SURRENDER AND RENEWAL OF LEASE AT 187 HARBORNE LANE (SELLY OAK PARK (REGISTERED CHARITY NO.522877))	
Wards affected:	Selly Oak	

1. Purpose of report:

- 1.1 To consider the surrender and renewal of the lease of 187 Harborne Lane, which is part of Selly Oak Park, held in trust.

2. Decision(s) recommended:

That Committee:

- 2.1 approves the proposal to accept the surrender of the existing lease and grant two new leases on the same land, each for 125 years.
- 2.2 approves the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust, including change of use to permit uses as described in C2 and C2A of the Town and Country Planning (Use Classes) including student accommodation.
- 2.3 authorises the recommendations of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval.
- 2.4 authorises any further approval necessary is sought of the Charity Commission or descendants of the original transferors of the land, or other bodies as appropriate and to agree to make any applications necessary for appropriate powers of disposal.
- 2.5 authorises the City Solicitor 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.
- 2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

Lead Contact Officer(s): Telephone No: E-mail address:	Nigel Oliver - Property Manager, Birmingham Property Services 0121 303 3028 nigel.g.oliver@birmingham.gov.uk
Telephone No: E-mail address:	Helen Juffs – Surveyor, Birmingham Property Services 0121 464 1624 helen.juffs@birmingham.gov.uk

3.	Consultation
3.1	<p>Consultation should include those that have an interest in the decisions recommended.</p> <p><u>Internal</u> Officers in the Parks Service have been consulted and have raised no objections.</p>
3.2	<p><u>External</u> No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the various Charities Acts.</p>
4.	Compliance Issues:
4.1	<p><u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u> 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 are required to be in the best interests of the trust and are intended to preserve the trust estate for the future while consistent with the Council's Policies, Plans and Strategies.</p>
4.2	<p><u>Financial Implications</u> (Will decisions be carried out within existing finance and resources?) The property is already leased long term but has been vacant for several years pending a suitable new use. There will be no direct cost in proceeding with the proposed new lease as the tenant will pay all landlords legal and surveyors costs. The substantial increase in rental income will be of general benefit.</p>
4.3	<p><u>Legal Implications</u> 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, failing which this will give rise to a breach of trust. Trustees have a duty to preserve the assets of the trust. Decisions made by the charity must be expedient in the interests of the charity at all times. The disposal of trust assets is an exceptional event and 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.</p> <p>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 the parkland and buildings to comply with charity law. Charitable activity is further regulated by the Charity Commission. Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 allows the City Council powers to amend services and meets the Council's regulations and standing orders.</p>
4.4	<p><u>Public Sector Equality Duty (see separate guidance note)</u> 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 an Equality Impact Assessment has been undertaken for the Cabinet report. No decision on a new lease will take place until the 'Council as trustee' have considered the matter further.</p>

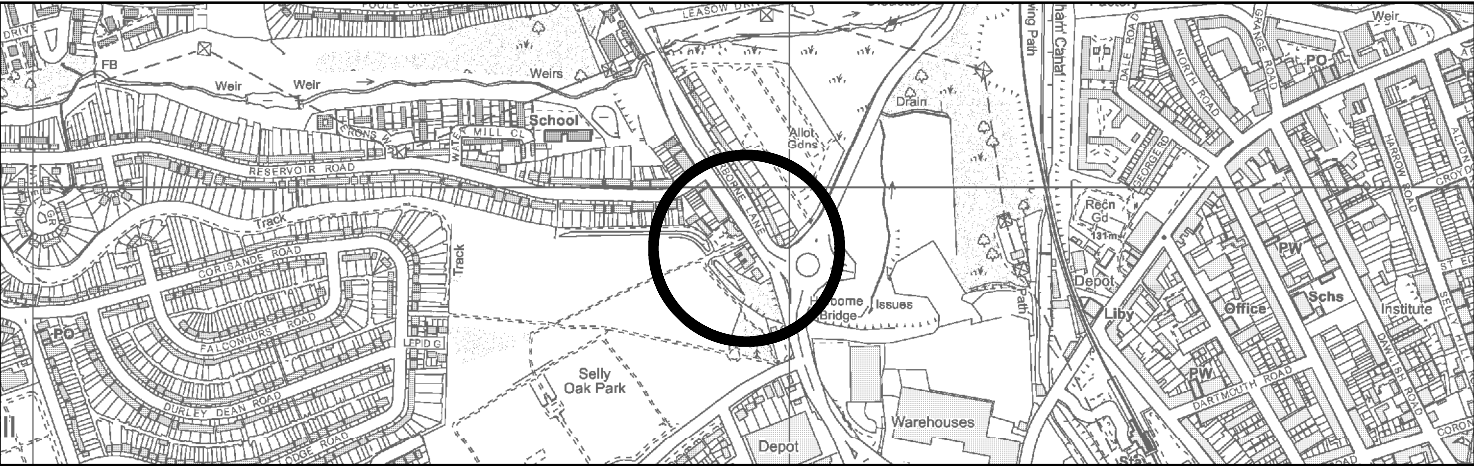
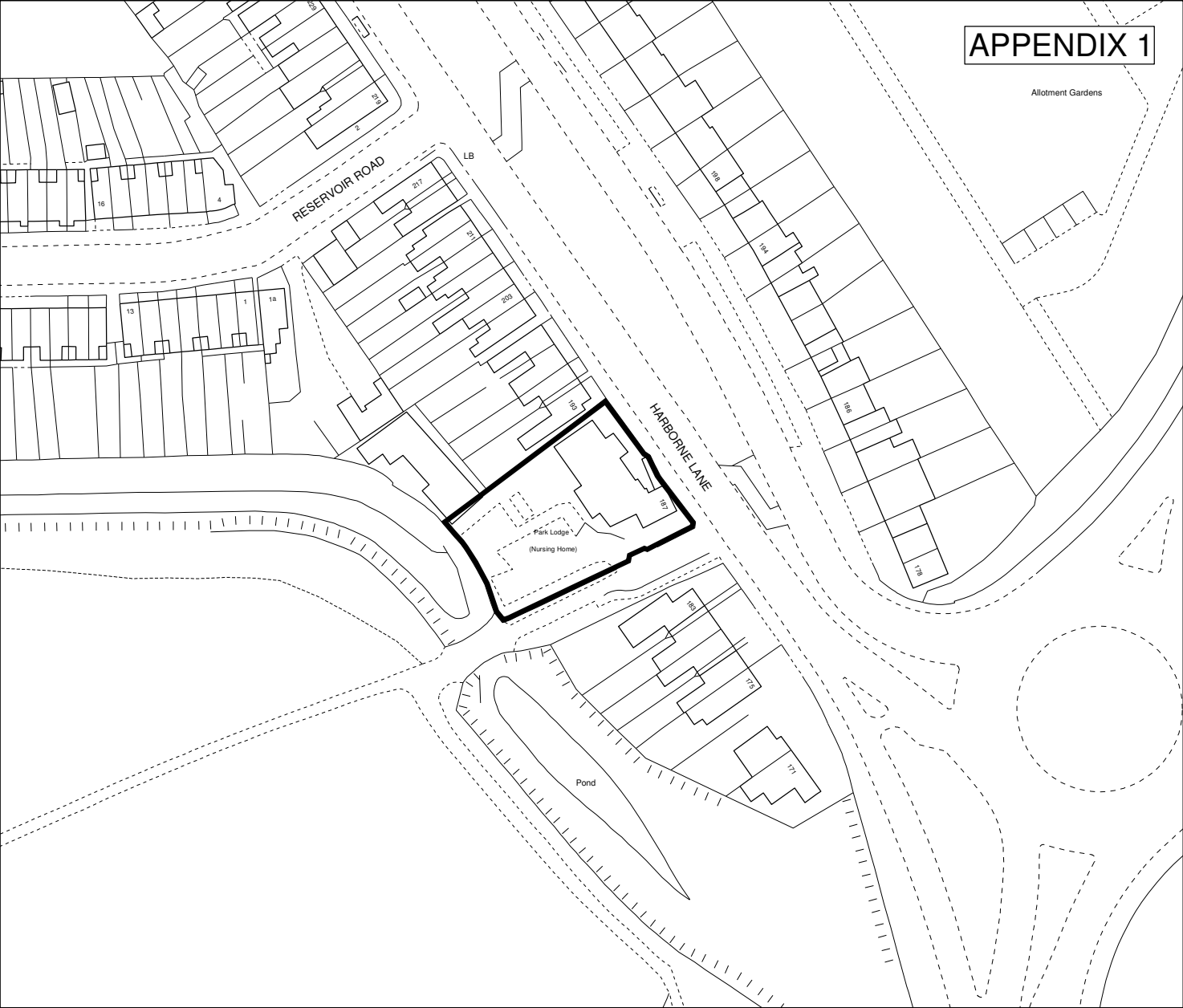
5. Relevant background/chronology of key events:

- 5.1 Selly Oak Park is formed from a number of acquisitions and is mostly held in trust as Registered Charity no.522877 k/a Public Park and Pleasure Ground Birmingham Selly Oak Park registered 01 October 1963. The City acquired the specific part of the Park when the land was gifted by William John, William W and Robert L Gibbins on 31/12/1919. The Gibbins family were a very prominent family in the area at the time. No. 187 Harborne Lane is the site of the former park keeper's lodge which was demolished in the 1980's. The trust deed contained a restrictive covenant limiting the use of the land generally to recreational purposes (public open space). In 1988, a Deed of Release was obtained to relax the covenants on this section permitting the use of the building to allow "care for old people." A 99 year lease was then granted and the care home property erected.
- 5.2 In May 2007, the nursing home closed as a result of changes in legislation making many care homes nationally non-compliant and financially unviable.
- 5.3 In 2013 the lease was assigned and the new tenant sought landlords consent to extend the term of the existing lease and to a change of use from 'care for old people' to uses as described in C2 and C2A of the Town and Country Planning (Use Classes) Order 1987 (as amended) including student accommodation. There is substantial demand for accommodation for employees of the two hospitals in the vicinity as well as general demand from university students. Planning consent to convert the existing building in to a 21 bed student accommodation block and a new stand-alone accommodation block for 9 student apartments has been granted. The conversion of the existing building has been undertaken and is fully occupied.
- 5.4 Negotiations to surrender and re-grant the lease have been on-going for some time and the main terms have now been agreed. The new terms will give the trust a greatly increased annual income and the ability to review the rent to market value every 7 years as opposed to the current lease which only doubles the passing rent every 25 years. Plans of the existing and proposed leases attached as Appendix 1 and 2. It is anticipated that a further Deed of Release will now be required in addition to other consents for the disposal.
- 5.5 **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. The area leased is separated from the main park by the line of the former Lapal Canal though still subject to charitable objects generally. There was also a potential requirement of land within the lease to assist the restoration of the Lapal Canal by the Lapal Canal Trust in reconstructing a turning circle on the bridge. However most recent plans for the canal development no longer include the leased land and so terms have recently been agreed which include the full area of the existing lease.
- 5.6 **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 also exist for the Trustees to make decisions on the future of the assets including disposal in the Trustee of Land and Appointment of Trustees Act 1996.
- 5.7 **Charity Finances**
Formal accounts are required to be prepared for the Charity Commission returns where appropriate although income at Selly Oak Park is below the threshold and far exceeded by general maintenance obligations for the parkland with all duties undertaken by BCC Parks Service.



6.	Evaluation of alternative option(s):
6.1	Do nothing. There is not a 'do nothing' option. Action must be taken as the Lessee is legitimately in occupation but currently operating a business without full consent of the landlord, and the passing rent is minimal.
6.2	Take legal action against the Tenant to stop using the building as student accommodation. This would incur legal fees and would prevent the development of land and increased income to the Council. It would also deny an opportunity to provide much needed affordable accommodation near to the hospitals when there appear to be very few other options for the site except standard residential development.
7.	Reasons for Decision(s):
7.1	To safeguard the Trust's assets, secure legitimate occupation and maximise income from land held by the Trust while bringing vacant buildings back into beneficial use.

Signatures	Date
Chairman of the Trusts & Charities Committee
Chief Officer	
Director of Property

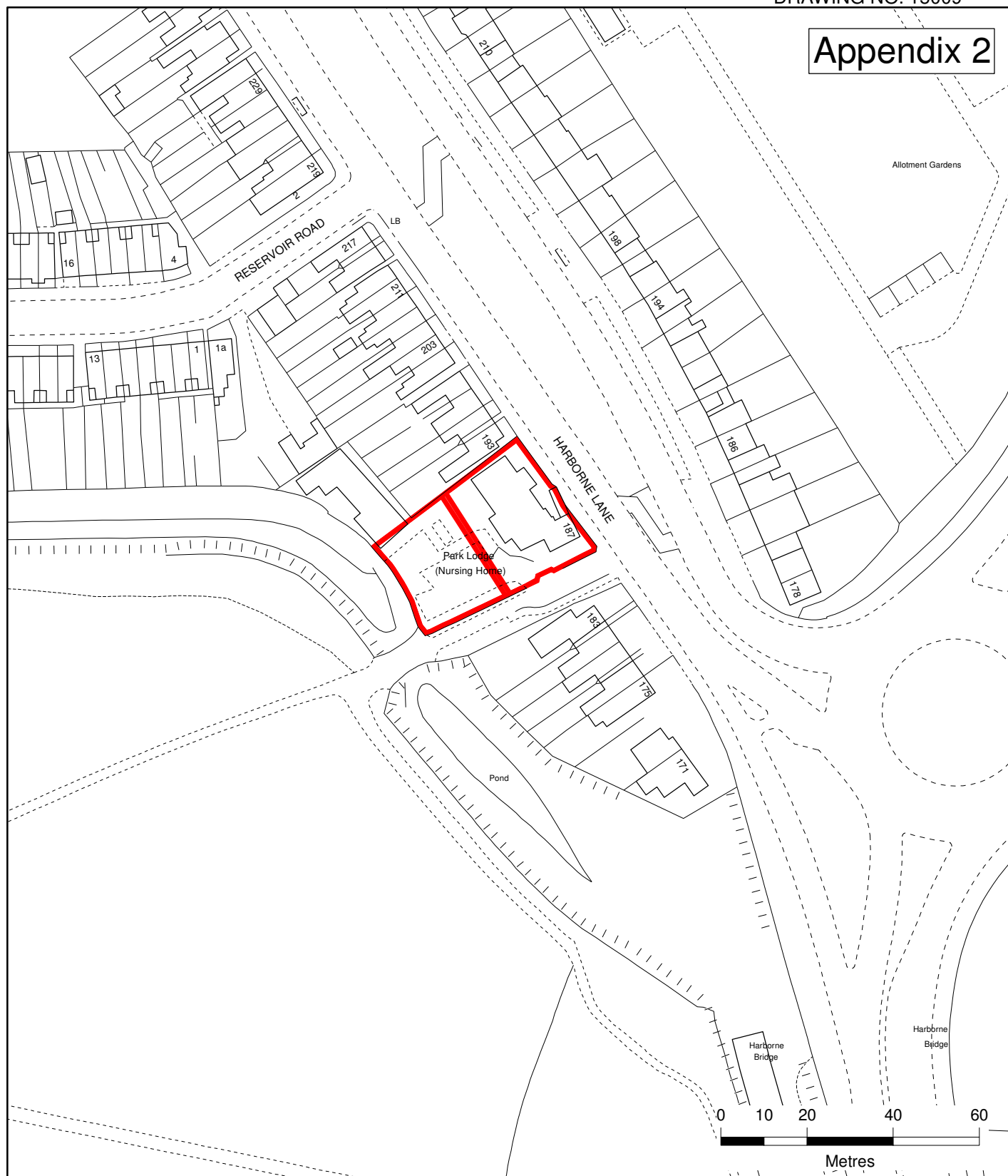
List of Background Documents used to compile this Report:	
1. Acquisition Deed dated 3 rd January 1929 with scheme of powers dated 28 May 1970	
List of Appendices accompanying this Report (if any):	
1. Plan showing the location and extent of existing lease	
2. Plan showing location and extent of two new leases to be granted.	



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 Birmingham City Council		Peter Jones BSc, FRICS Director of Property Birmingham Property Services PO Box 16255 Birmingham B2 2WT		
187 Harborne Lane Selly Oak	 Page 25 of 36	Scale (Main Map)	Drawn	Date
		1:1,250	Bharat Patel	08/04/2016
		O.S.Ref. SP0382NE		

Appendix 2



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

187 Harborne Lane
 Selly Oak



SCALE

1:1,250

DRAWN

Bharat Patel

DATE

08/04/2016

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S.Ref. SP0382NE

BIRMINGHAM CITY COUNCIL –COUNCIL AS TRUSTEE

PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	<i>Exempt information paragraph number – if private report:</i>
Report of: Date of Decision:	(JOINT) CITY SOLICITOR AND MONITORING OFFICER 20 APRIL 2016	
SUBJECT:	APPOINTMENT TO OUTSIDE BODIES RELEVANT TO THE WORK OF THE COMMITTEE AND ITS TERMS OF REFERENCE	
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 for Local Services:	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	ALL	

1. Purpose of report:
<p>1.1 The Committee are asked to note the progress made by Members of the Trusts and Charities Committee Appointments Protocol Panel, consisting of Councillor Philip Davis, Councillor John Alden, and Councillor Paul Tilsley.</p> <p>1.2 This matter was not included in the Forward Plan because the governance of Charitable Trusts does not give rise to any “key” decisions.</p>

2. Decision(s) recommended:
That the Trusts and Charities Committee:-
<p>2.1 Note the progress made by Members of the Trusts and Charities Committee Appointments Protocol Panel (the “Panel”) as set out in Appendix 1 of this Report.</p> <p>2.2 Authorises Councillor Philip Davis and the (Joint) City Solicitor and Monitoring Officer to Report on all progress and recommendations made by the Panel, to Cabinet and/or Council Business Management Committee (“CBM”), with a view to implementing any agreed revisions to the Council’s Constitution, subject to any further recommendations made by this Committee and/or the outcome of any consultation agreed.</p> <p>2.3 Authorises the Joint City Solicitor and Monitoring Officer to prepare, negotiate, execute, seal and complete all necessary documentation to give effect to the above decisions.</p>

Lead Contact Officer(s):	Page 29 of 36 Stuart J Evans, (Joint) City Solicitor and Monitoring Officer
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	Sanjeev Bhopal, Senior Solicitor Legal & Democratic Services
Telephone No: E-mail address:	0121 – 675 4673 sanjeev.bhopal@birmingham.gov.uk
3. Consultation	
<p>Consultation should include those that have an interest in the decisions recommended</p> <p>3.1 <u>Internal</u></p> <p>The Chairman of the Committee has been consulted on the content of this Report. The (Joint) City Solicitor and Monitoring Officer, the Deputy Leader, Councillor Ian Ward, Officers supporting the Committee, have provided relevant input into the Report.</p> <p>3.2 <u>External</u></p> <p>External consultation will be undertaken, if this is required, once the final recommendations of the Panel are confirmed.</p>	
4. Compliance Issues:	
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>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 citizens of Birmingham. This is consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham."</p> <p>4.2 <u>Financial Implications</u> <u>(Will decisions be carried out within existing finance and Resources?)</u></p> <p>The (Joint) City Solicitor and Monitoring Officer, already Chairs bi-monthly officer meetings of the Constitution Review Group. Any proposals or revisions to the Constitution as agreed by Cabinet and/or CBM will be considered by the Group as part of the (Joint) City Solicitor and Monitoring Officer's wider Constitution review.</p>	

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, other relevant legislation and guidance issued by the Charity Commission when making decisions. Members appointed to outside bodies through under the Council's Constitution will receive a Briefing Note setting out the key legal considerations they should be mindful of when exercising their functions, together with relevant guidance issued by the Charity Commission.

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:

Please refer to Appendix 1.

6. Evaluation of alternative option(s):

- 6.1 To do nothing and continue with the existing arrangements is likely to lead to further requests by external charitable trusts to remove the Council's ability to nominate or Co-opt Members to these bodies.

7. Reasons for Decision(s):

- 7.1 To keep members fully informed of all key developments made by the Panel.

Signatures	<u>Date</u>
Chairman of the Trusts & Charities Committee	20 April 2016
(Joint) Chief Officer Director of Legal & Democratic Services	20 April 2016

List of Background Documents used to compile this Report:
None

List of Appendices accompanying this Report (if any):
1. Note Prepared by Councillor Philip Davis following the Panel Meeting on the 8 March 2016

Report Version	<u>Final</u>	Dated	<u>20 April 2016</u>
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Appendix 1 – Trusts & Charities Committee Meeting 20 April 2016

TRUSTS & CHARITIES COMMITTEE - APPOINTMENTS PROTOCOL PANEL (the “Panel”)

MEETING 8th MARCH 2016

Members: Councillors Philip Davis, John Alden and Paul Tilsley

Background

1. The City Council had historically made a number of appointments of trustees to charitable bodies across the City. The Trusts & Charities Committee (the “Committee”) had asked the Panel to consider how links to charities and trusts might be improved in terms of an improved appointments process to appropriate charities. This inquiry is partly promoted by poor attendance at trustee boards by some Council nominees once nominated, or the long-standing absences of nominees despite requests to fill trustee places.
2. While the assumption is that most appointments should remain with Cabinet directly, some charity trustee appointments could more appropriately come via the Committee, which already, for example, receives annual accounts for noting from some of the charities concerned. The Committee was chiefly concerned with 'historic' trusts or trusts related to assets held in trust e.g. The Highbury Estate. Here the City, via the Committee, had a natural and legal connection to the charity or trust concerned.
3. The City Council has key relationships with a number of 'strategic' charitable trusts - for example the Library of Birmingham and the Birmingham Museums Trusts. No change is suggested for appointments to this category of trusts.
4. Birmingham Conservation Trust (“BCT”) recently reviewed its structure and has already asked if the Committee could nominate City trustees to its board, given its work on assets held in trust. BCT has, however, a historic relationship with the City Planning Department, so the views of Cllr Mike Sharpe, Planning Chairman should be sought.

Proposals made by the Panel

5. The Panel is considering how the appointment process could meet certain principles. It is suggested that Appointed Trustees should be:
 - A Birmingham resident (preferable, but not compulsory)
 - Regarded as equivalent to a voluntary Non Executive Director role, with appropriate attendance and diligence required. A 'Statement of Responsibilities' should be drawn up (unless already existing in City Codes of Conduct), in addition to Guidance issued by the Charity Commission on the roles and responsibilities of a Trustee (the “Essential Trustee-What you need to know”)
 - Requested to Report at least annually to the Committee on the work of the appropriate charitable trust.
 - Subject to removal at any point by decision of the Committee on advice from the City Solicitor and Monitoring Officer

Appendix 1 – Trusts & Charities Committee Meeting 20 April 2016

Future Nominations

6. To assist in the nomination process any new Committee procedure should have regard to the following principles/procedure:
- Nominations should initially be sought via elected Members i.e. Members may put themselves forward, or put forward Non- Members, though the decision to appoint remains with the Committee;
 - Nominations may be received and considered by the Committee by the external body themselves

Further action

Officers will assist the Panel to compile a list of relevant charitable trusts appropriate for Committee appointments.

Once the list is compiled, the Panel Members will liaise with the Chairman of District Committees for local perception of which charitable trusts are active in their Districts, if any, to better inform potential Committee appointment process.

Committee Services will provide the Panel with a definitive list of all charitable bodies the Council nominates to.

Councillor Davis will prepare note of today's Panel meeting and arrange another Panel meeting (if required).

.....
Councillor Philip Davis - Chairman, Trusts & Charities Committee

TRUSTS AND CHARITIES COMMITTEE
20 APRIL 2016
SCHEDULE OF OUTSTANDING MINUTES

<u>Date/ Minute No</u>	<u>Subject Matter/Response</u>	<u>Comment</u>
02/03/16– 791	<u>Sole and Custodian Trustee Trusts and Charities</u> – officers to report on a sixth monthly basis on the activities undertaken by Sole and Custodian Trusts and Charities.	<p>Committee determined to retain this Minute on the 22 Julyl 2015</p> <p>Committee in light of the fact that officers would continue to Report to Committee on a six monthly basis on the activities undertaken by the Sole and Custodian Trusts & Charities.</p> <p>In addition, Officers are to work towards drafting the next Annual Report to Full Council as Trustee. The tentative date for submission as discussed with the Deputy Leader and the Chairman is 12 July 2016.(tbc)</p>

