

# BIRMINGHAM CITY COUNCIL – "COUNCIL AS TRUSTEE"

## PUBLIC REPORT

Report to:	TRUSTS AND CHARITIES COMMITTEE	Exempt information paragraph number . If private report:
Report of:	Strategic Director, People Directorate	
Date of Decision:	15 April 2015	
SUBJECT:	DISPOSAL OF A LONG LEASEHOLD INTEREST ON PART OF GROVE PARK (REGISTERED AS 'THE PUBLIC PARK AT HARBORNE' - REGISTERED CHARITY NO. 501812)	
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:		
Relevant O&S Chairman:	N/A	
Wards affected:	Harborne	

1. Purpose of report:
1.1 To seek approval to dispose of part of the land held in Trust at Grove Park to Birmingham City Council to regularise the use of the land as a care centre for the elderly; to create a trading subsidiary for the Trust to enable legal completion of the lease and other future actions; and to submit to the Charity Commission an application for a Scheme/Order allowing the Trust the necessary additional powers to undertake the disposal if required.
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.

Lead Contact Officer:	Margaret Ashton-Gray, Head of City Finance, People Directorate
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Telephone No:	Philip M Andrew, Head of Service, Economy Directorate
E-mail address:	0121 303 3696 Philip.Andrews@birmingham.gov.uk

<b>3.</b>	<b>Consultation</b>
3.1	<p><u>Internal</u> The Chairman of the Committee was consulted on the preparation of this report. Officers in Legal Services, Corporate Finance, Birmingham Property Services and the People Directorate were involved in the drafting of this report.</p>
3.2	<p><u>External</u> N/A</p>
<b>4.</b>	<b>Compliance Issues:</b>
4.1	<p><u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u> The recommendations need to be consistent with the objects/purposes of the Trust which are that the land is used as a place for public recreation not precluding utilising small areas for other public or charitable purposes. These are consistent with the Council's policies, plans and strategies.</p>
4.2	<p><u>Financial Implications</u> The Trust will receive a one-off premium payment in return for the creation of a long leasehold interest of 150 years at a peppercorn ground rent. The capital receipt will be based on an independent valuation prepared in accordance with Part 7 Charities Act 2011. The premium will be ring-fenced and placed in reserve as restricted funds, for this specific trust and can only be used legally in accordance with the objects/purposes of the Trust.</p>
4.3	<p><u>Legal Implications</u> Any disposal between the charitable Trust and Birmingham City Council will have to be sanctioned by the Charity Commission as a "connected person" transaction for the purposes of Part 7 Charities 2011.</p> <p>However, the Commission will be aware of the legal principle (established in <i>Rye v Rye</i> [1962] A C 496) that no one person can be both landlord and tenant of their own property. This also the position adopted by the Land Registry who would have to be approached to register the Council's leasehold interest in the land. Paragraph 5.4 of Land Registry Practice Guide 25 states that "The House of Lords decided that neither one person, nor a company, can create a lease in favour of the same person or company. Any attempt to do so is without legal effect (<i>Rye v Rye</i> [1962] A C 496). Therefore, we also cannot give any kind of registered title to such a lease.</p> <p>As an unincorporated charitable trust, the charity does not have a sufficiently separate and distinct legal entity to grant a lease to Birmingham City Council. Therefore, the charitable Trust would need to transfer the assets of the charity, (which would form the basis of the leasehold interest to the Council), to a wholly owned trading company under a "head lease". The terms of the lease to the trading vehicle must be sufficient to allow the Council to enter into a sub-lease for the interest it now seeks to acquire from the Trust. The Council would need to satisfy itself that the Council as Trustee had sufficient powers to effect the above, before the disposal could proceed.</p>
4.4	<p><u>Public Sector Equality Duty</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.</p>

**6. Evaluation of alternative option(s):**

- 6.1 There is not a 'do nothing' option here. The care centre is already established and the formalisation of the use and occupation is in the best interests of both the Trust and the service providers.
- 6.2 The continuation of the current appropriation agreement would risk the Trust missing an opportunity to generate value in the site as required under the Charities Acts. It is appropriate to accept the offer of the initial premium for the site rather than an annual rental. The premium will be based on the assessment of open market value for land for these uses and once received can be invested in accordance with the wider objectives of the Trust at Grove Park.

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

- 7.1 To ensure compliance with the statutory requirements for the management of land held in trust, achieve best value and to beneficially improve the provision of services for the care of the elderly in Birmingham.

**Signatures****Date**

Councillor Philip Davis  
Chair of Trust & Charities  
Committee

Peter Hay  
Strategic Director People  
Directorate

*For*  
*A. L. Hing*

*8/4/2015*

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

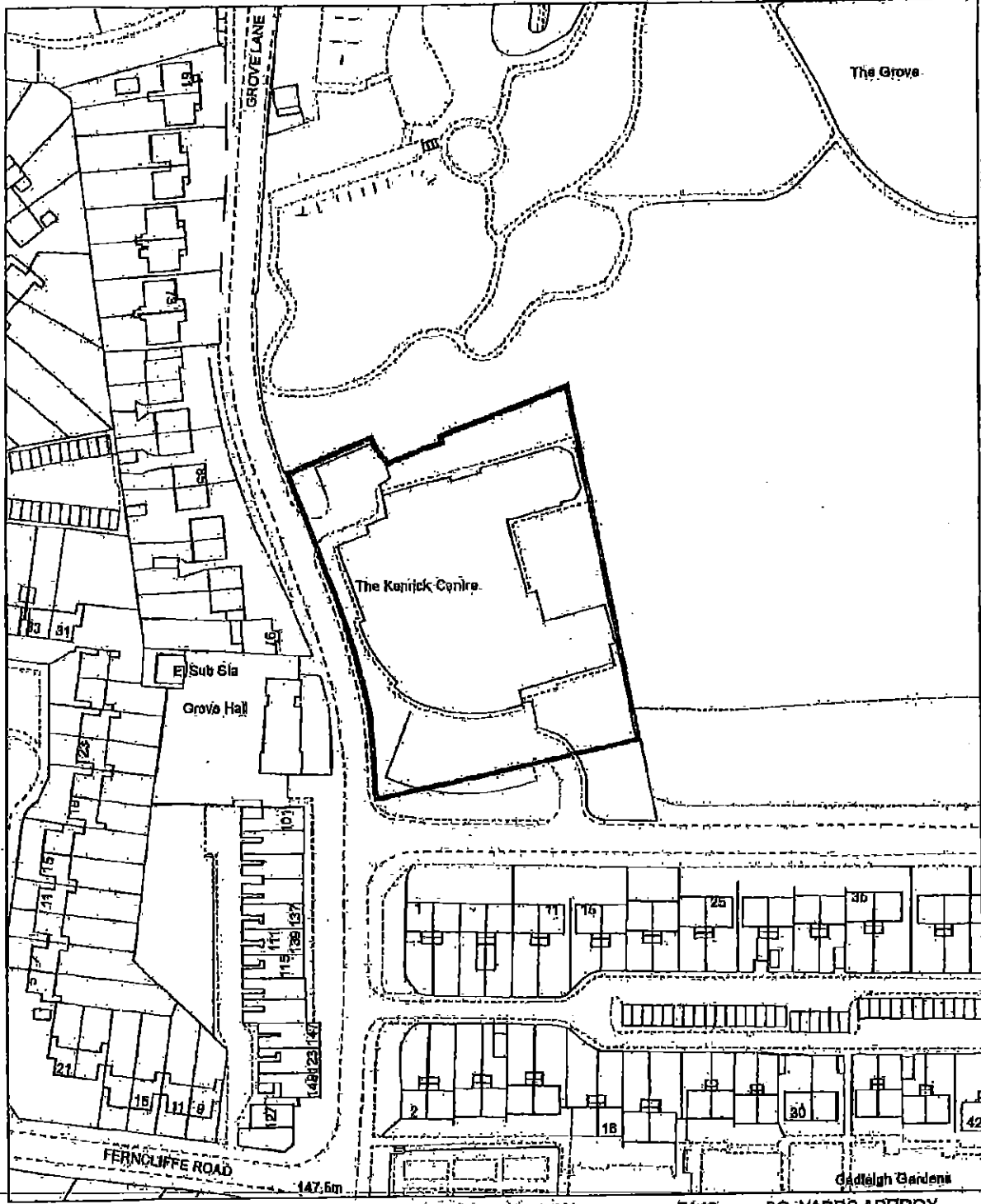
- Report to Cabinet of 19<sup>th</sup> December 2005: "Commissioning Strategy for Older People's Services – Full Business Case for the development of Special Care Centres" (Forward Plan Ref 117460/2005)
- Report to the Trusts and Charities Sub-Committee of 26<sup>th</sup> July 2006: "The Proposed Development of a Special Care Centre at Grove Park, Harborne"
- Report to Cabinet of 14<sup>th</sup> February 2011: "Establishment of an Assessment Service at the Kenrick Care Centre" (Forward Plan Ref 393982/2011)

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



1. Appendix A: Site Plan

**Report Version****2****Dated****7/04/2015**

Drawing Number: 6586



AREA EDGED RED 5970 SQ. METRES APPROX. 7140 SQ. YARDS APPROX.

AREA EDGED RED		5970	SQ. METRES APPROX		1740	SQ. METRES APPROX	
 <b>Birmingham City Council</b>			Peter Jones, BSc, MRICS Director Of Property 1, Lancaster Circus Birmingham B4 7DJ				
The Kehrick Centre Mill Farm Road Harborne					SCALE	DRAWN	DATE
					1:1,250	Mohammed Ilyas	22nd July 2010
					O.S Ref	SP0388SW	

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**BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE**

**PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS &amp; CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>Director of Corporate Finance</b>
<b>Date of Decision:</b>	<b>16th April 2014</b>
<b>SUBJECT:</b>	<b>HIGHBURY TRUST DISPOSAL OF HIGHBURY ON LEASE TO BIRMINGHAM CITY COUNCIL</b>
<b>Wards affected:</b>	<b>Moseley &amp; Kings Heath</b>

1. Purpose of report:
  - 1.1 To seek approval to grant a lease of Highbury to Birmingham City Council for temporary use by Civic Catering and to submit to the Charity Commission appropriate applications to secure all approvals to undertake the disposal.

**2. Decisions recommended:**

That the Committee recommends that

- 2.1 the grant of a lease for up to three years, at a market rent, and from a date to be determined with Birmingham City Council or any company of which the Council is the sole shareholder, be agreed for the continuing use of Highbury by Civic Catering.
- 2.2 the recommendation of the Trusts & Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval.
- 2.3 an application be made to the Charity Commission for an Order to sanction a disposal to the Council as a 'connected person' as defined within the Charities Act 2011
- 2.4 That approval be given to the terms of any disposal to be agreed by the Director of Property with Drivers Jonas Deloitte as independent agents on behalf of the Trust
- 2.5 and authorises the Chief Legal Officer to negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

<b>Lead Contact Officers:</b>	Nigel Oliver, Birmingham Property Services
<b>Telephone No:</b>	0121 303 3028
<b>E-mail address:</b>	nigel.g.oliver@birmingham.gov.uk

**Signatures (or relevant Cabinet Member(s) approval to adopt the Decisions recommended):**

Chief Officer(s): .....

Cabinet Member(s): .....

Dated: .....

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

none

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

none

### **3. Compliance:**

#### **3.1 Consultations:**

Substantial and extensive public consultation has been undertaken on the various options for the future use of the premises within the Trust boundaries including local Member consultation, public meetings and information posted on the Birmingham website and local press to ensure wide circulation and involvement. Of the responses received from the public consultation, an overwhelming majority of those responding were in favour of a the lease to Civic Catering covering the period up to refurbishment of Highbury provided it is at market rent in line with the requirements of the Charities Act 2011 and guidance issued by the Charity Commission.

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

The City Council is Sole Corporate Trustee for a number of Charitable Trusts and has delegated the day to day administration of the Charitable Trusts to the Trusts & Charities Committee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the future management of the estate will be governed by the Trust document as amended by any Scheme approved by the Charity Commission if this is required. The grant of a lease to Birmingham City Council will be a disposal to a 'connected person' and will require an order from the Charity Commission

- The Trust known as 'Highbury' holds the freehold interest of the estate which has been a Registered Charity (no 1039194) since 1994 and as Sole Corporate Trustee of the Highbury Trust is responsible for ensuring the Trust is managed strictly in accordance with the governing document, i.e. "for the benefit of the citizens of Birmingham" and in strict accordance with charity law (which is subject to regulation by the Charity Commission). The conveyance requires the Trust to maintain the Hall and land as a recreation ground. All applications proposed in this report are intended to improve the future management of the Park.

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

The Council as Trustee through 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 including the requirement to act in the best interests of the Trust at all times. An application to the Charity Commission and the formation of a lease will be undertaken by officers in Legal Services and Birmingham Property Services. Once implemented, portions of the estate, including the Hall and Chamberlain House, as deemed appropriate can be let on terms agreed by a qualified independent surveyor. Any surplus rental income accruing to the Trust will be spent on maintaining the trust assets.

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

The sanctioning of the disposal rests entirely with the Charity Commission who will consider the application in accordance with its own guidance and charitable law. If this is not approved the Trust can continue to be operated as now but this will not resolve the issues over the Hall or Chamberlain House.

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

- 4.1 The estate comprises approximately 13.03 hectares (32.2 acres) of park land including Highbury Hall and Chamberlain House and three lodges. The estate was gifted by the heirs of the Right Honourable Neville Chamberlain on 31<sup>st</sup> March 1932.
- 4.2 The terms of the gift simply provided that the Trustees should hold them "in the first instance for use as a hospital for the treatment of limbless and other soldiers, sailors or pensioners" and "if and when the Trustees should consider that they were no longer needed for those purposes the Trustees should hold the property for such public purposes as they with the consent of the Corporation of Birmingham might determine or might at the request of the Corporation transfer it to them for the general benefit of the Citizens of Birmingham" but did not include provision for alternative modern management such as the option to make disposals, grant leases or work with external partners. This route for approval seems to have been sufficient at the time but charity law has developed and the Council as Trustee can now rely on the statutory provisions of the Trusts of Land and Appointment of Trustees Act 1996 to proceed with the disposal subject to the matters set out in this Report.
- 4.3 The City Council, through its Civic Catering operation continues to use Highbury and the nearby grounds as a conference centre and wedding venue. It is preferable to maintain an occupying tenant until the nature and duration of any refurbishment is clarified and therefore appropriate to continue with Civic Catering provided appropriate legal tenure is resolved. Birmingham City Council operating as Civic Catering is a 'connected person' to the Trust and therefore an order from the Charity Commission is required before a disposal including a lease can proceed.
- 4.4 A proposal to refurbish Highbury forms one of the key elements of an Options Appraisal for the Highbury Trust estate subject to proposed applications to the Heritage Lottery Fund and others and the lease to Birmingham City Council is necessarily limited to the period until that refurbishment may start. At that stage the premises would be vacant for the duration of the works and likely then subject to a marketing exercise to secure a new tenant for the refurbished premises.

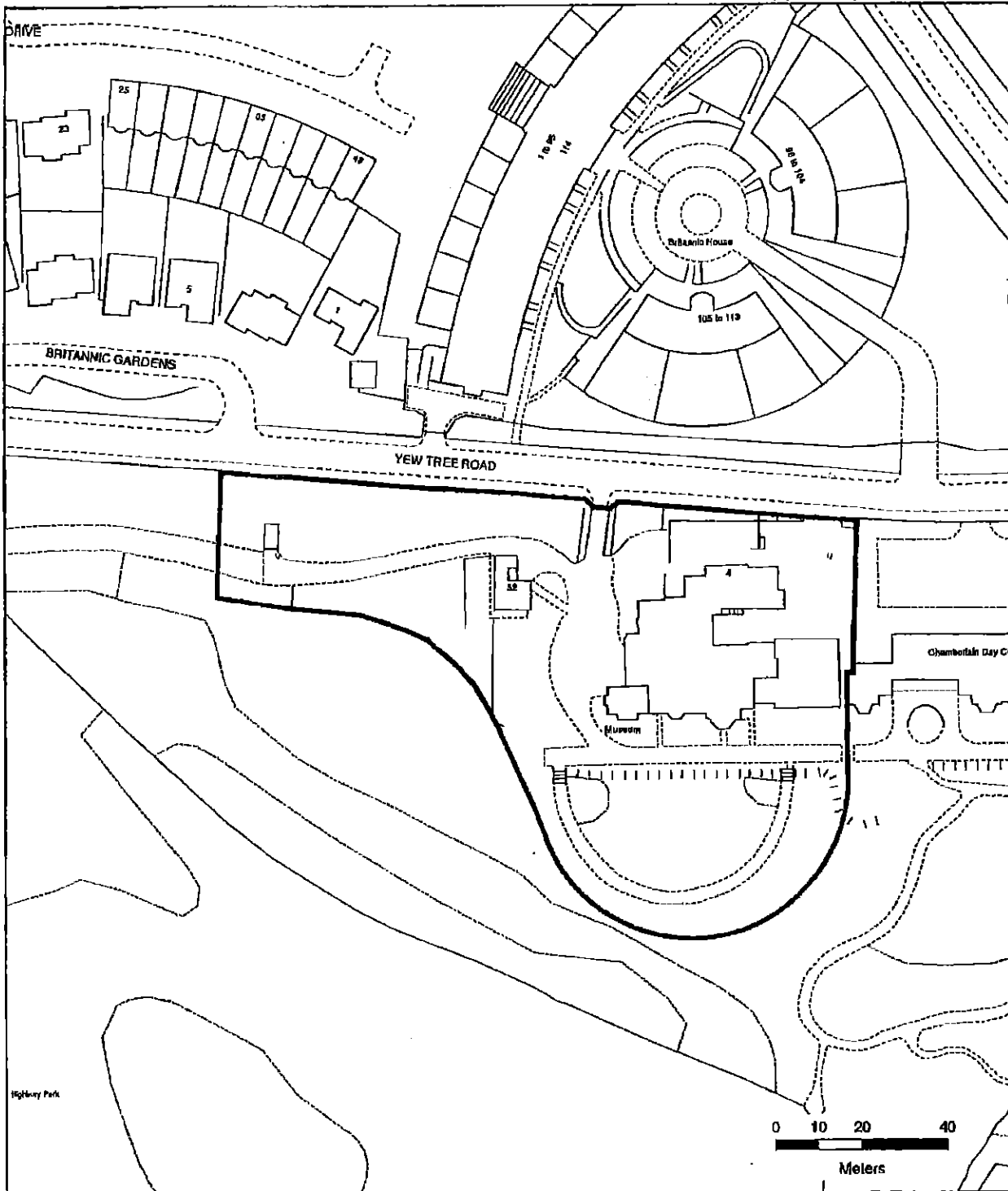
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**5. Evaluation of alternative option:**

To do nothing is not an appropriate option. Without an occupier the Hall would be at considerable risk while awaiting the funding for a refurbishment and a letting on the general market. It is unlikely that an alternative commercial operator can be found to take over for the short period left until that time but that is an option that can be considered if for any reason Civic Catering do not proceed.

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DRAWING NO. 12894



AREA EDGED RED 0.96 HECTARES, APPROX. 2.38 ACRES, APPROX.



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

**Highbury Lease Plan (For Civic Catering)**  
Yew Tree Road  
Moseley



SCALE	DRAWN	DATE
1:1250	Bharat Patel	28/05/2014

O.S. Ref. SP0682NE



**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>22<sup>nd</sup> JULY 2015</b>
<b>SUBJECT:</b>	<b>ELFORD ESTATE - APPROVAL OF ASSIGNMENT - LEASE FOR HOWARD PRIMARY SCHOOL PLAYING FIELD</b>
<b>Wards affected:</b>	<b>Outside of City Boundaries</b>

**1. Purpose of report:**

- 1.1 To approve the decision by the Chair of the Trusts and Charities Committee to approve the assignment of the existing lease of the playing fields adjacent to the school from the Howard Primary School to the new Academy known as The Small Schools Multi Academy Trust.

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

- 2.1 To note the action of the Chairman, in consultation with officers, in agreeing the assignment of the lease to the new Academy and to delegating to the Director of Property and the Director of Finance authority to undertake all appropriate actions to negotiate the terms of the licence 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

**Signatures:**

Chief Officer(s): .....

Dated: .....

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

1. Chair's Action report

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

None.

**BIRMINGHAM CITY COUNCIL- CHAIR'S ACTION  
ELFORD ESTATE - APPROVAL OF ASSIGNMENT OF LEASE**

<b>Wards affected:</b>	<b>Outside of City Boundaries</b>
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- 1.1 The Howard Primary School at Elford uses land held by the Elford Estate as a playing field for the schools use only. The lease is granted to South Staffordshire County Council for a period of 38 years from 25<sup>th</sup> December 1993 (16 years remaining) with a rental income of £225 per year. The School is converting to an Academy under the Academies Act 2010 and will be run by The Small Schools Multi Academy Trust, though the school will continue to be known as The Howard Primary School. The above statute empowers the Academy to take leases direct and it is proposed to assign the remainder of the lease from South Staffordshire County Council to the Academy from 1<sup>st</sup> June 2015.
- 1.2 The lease includes a provision against assignment but it is assumed that when negotiated there was not likely to be any alternative schools providers and this was an additional power to prevent uses other than schools playing fields being promoted rather than specifically against an assignment as now proposed. A Deed of Variation will be required to amend the lease to enable this or future assignments to take place.
- 1.3 The Director of Resources seeks the approval of the Chair of the Trusts and Charities Committee to enable the lease of the playing field to be assigned to The Small Schools Multi Academy Trust on the same terms except as regards to assignment and for the remainder of the original lease period. Please note it is anticipated that The Small Schools Multi Academy Trust will make an application for a longer lease in due course but any application will be more appropriately dealt with at Committee.
- 1.4 That the Director of Property and Director of Finance be authorised to negotiate the terms of the proposed assignment and Deed of Variation to enable the land to be used as playing fields without interruption.
- 1.5 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 other statutes as may relate to the charitable status of the land in the granting of this lease, if any.

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

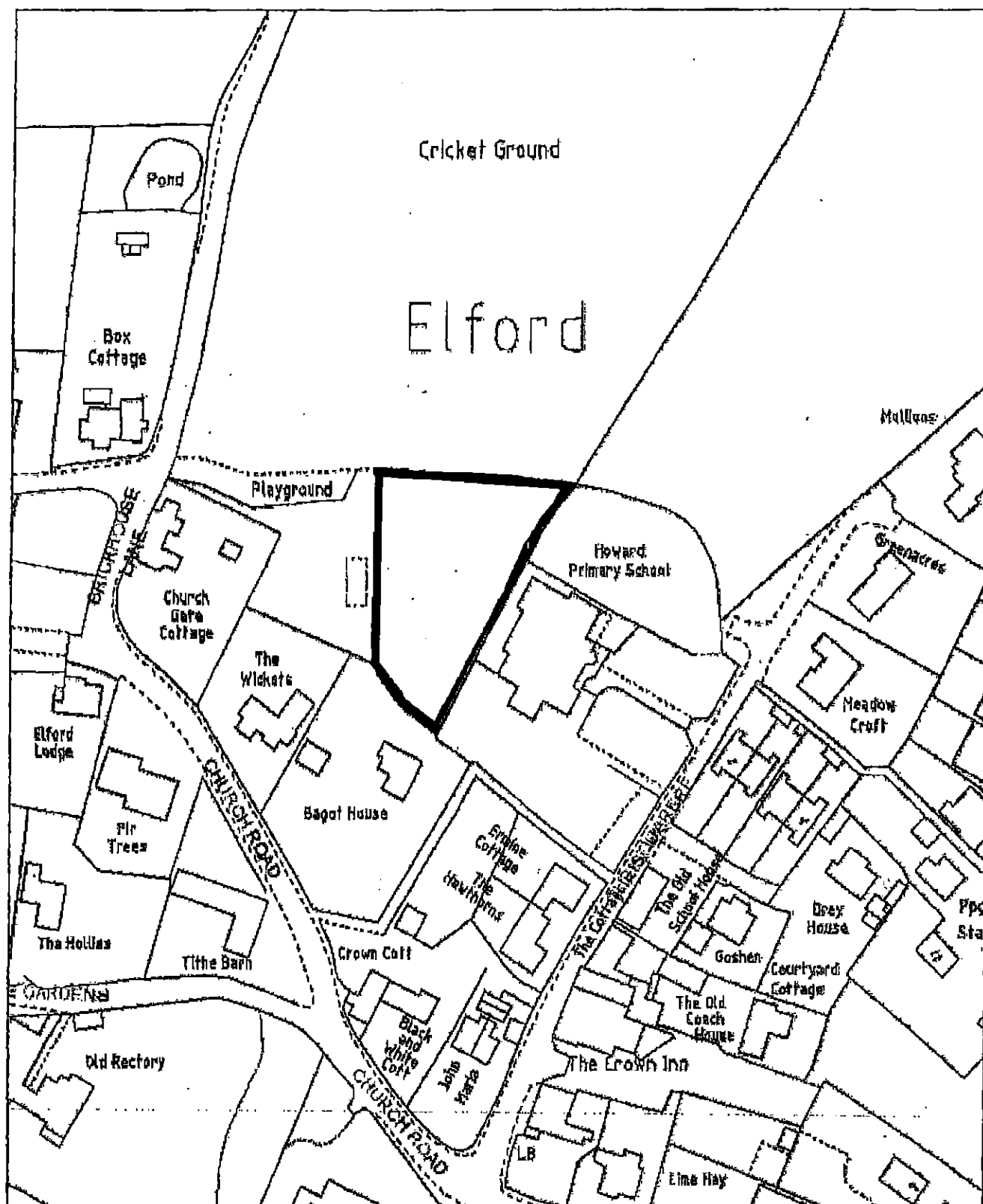
**Signatures of the relevant Chairman and officers in agreeing to the matters highlighted in paragraph 1.1 to 1.5 above re playing field land at Elford for the Howard Primary School :-**

Chair of the Trusts and Charities Committee:  
Councillor Philip Davis

Chief Officer(s): .....

Date .....

**Appendix 1 : Lease and plan**



**Birmingham City Council** Map Created By:

**Notes**

Date of Map Creation: 28/07/2015



Scale:  
1:1,250

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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>	<b>DIRECTOR OF PROPERTY</b>
<b>Date of Decision:</b>	<b>21<sup>st</sup> September 2016</b>
<b>SUBJECT:</b>	<b>SURRENDER AND RENEWAL OF LEASE OF PLAYING FIELD FOR HOWARD PRIMARY SCHOOL (THE ELFORD ESTATE CHARITY – REG. NO.1000692)</b>
<b>Wards affected:</b>	<b>OUTSIDE OF THE BIRMINGHAM CITY BOUNDARIES</b>

<b>1. Purpose of report:</b>
1.1 To consider the request of the Small Schools Multi Academy Trust operating the Howard Primary School for the grant of a longer lease of the playing field land, being part of the Elford Estate held in trust.

<b>2. Decision(s) recommended:</b>
That Committee:
2.1 approves the proposal to accept the surrender of the existing lease and grant a new lease of up to 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.
2.3 authorises the recommendations of the Trusts and Charities Committee to be advanced to a future meeting of the Council as Trustee for approval.
2.4 authorises any further approval necessary is sought of the Charity Commission or other party or body 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.

<b>Lead Contact Officer(s):</b>	Nigel Oliver Birmingham Property Services
<b>Telephone No:</b> <b>E-mail address:</b>	0121 303 3028 <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 various Charities Acts. 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?**

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.

**4.2 Financial Implications**

The property is already leased long term to the school. There will be no direct cost in proceeding with the proposed new lease as the tenant will pay all Trust landlord's legal and surveyor's costs. The negotiations may secure a small rise in rent paid and any increased rental income will be of general benefit to the Trust.

**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, 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.

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.

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

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

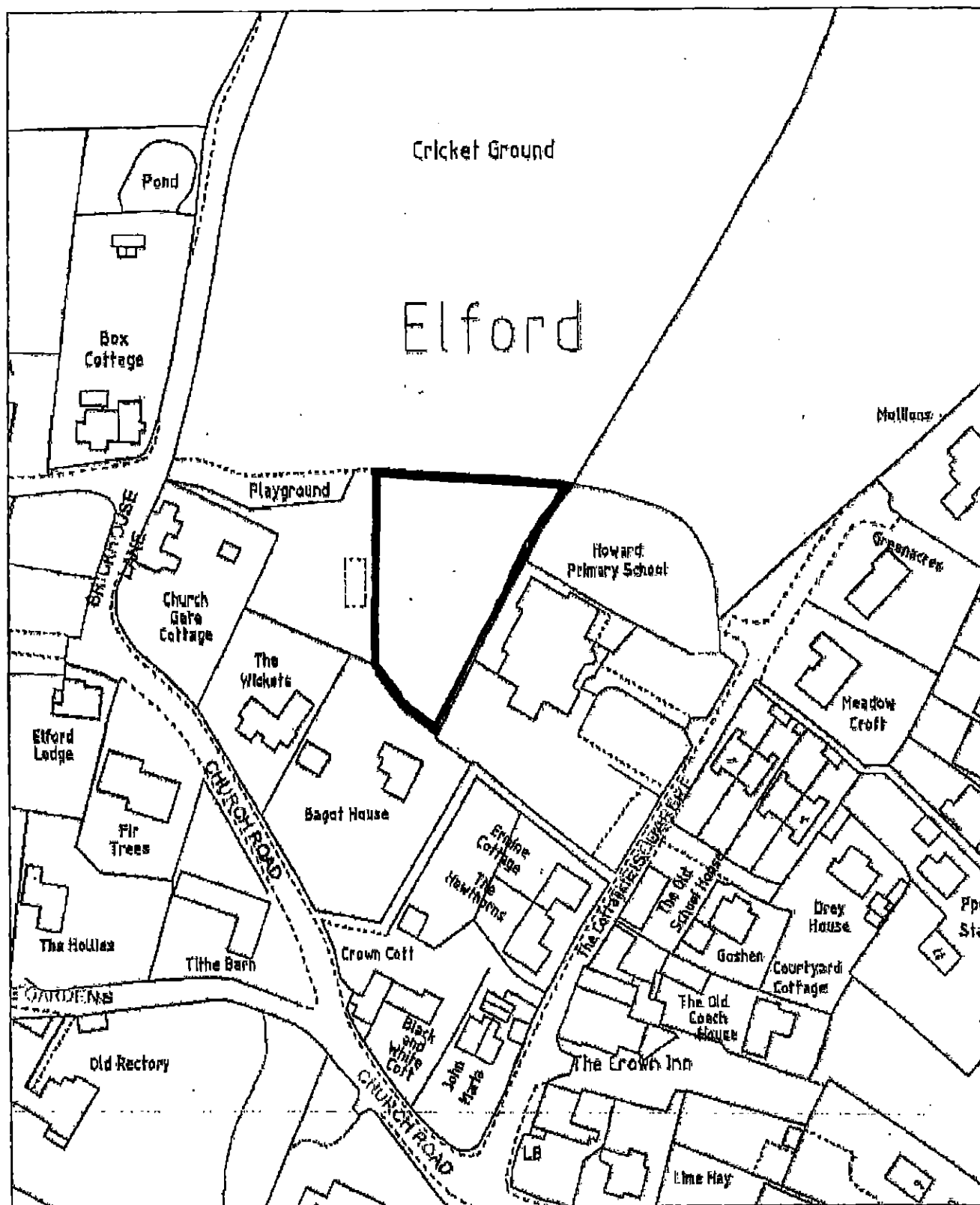
- 5.1 The Elford Estate Charity is formed from a single gift to Birmingham from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692 registered 25 October 1990. The Governing document is a Scheme dated 14<sup>th</sup> May 1990 which empowers the trust to make disposals of land and property by sale or by lease without further consent from the Charity Commission.
- 5.2 The Howard Primary School uses 0.187 hectares (0.396 acres) of land on the Elford Estate adjoining the school as a small playing field for the schools use only. The lease granted to South Staffordshire County Council for a period of 38 years from 25<sup>th</sup> December 1993 with a rental income of £225 per year was assigned to The Small Schools Multi Academy Trust on 1<sup>st</sup> June 2015. The Academy seeks a new long lease to match their interest in the school buildings (not on trust land) and preferably for 125 years in line with the usual model for the grant of leases to Academies generally.
- 5.3 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 for the school playing field has no independent access and would be difficult to use for any other purpose at present and therefore the grant of a long lease appears not to be detrimental to the Estate. Few long leases have been granted at Elford but it is noted that the school playing field directly adjoins land leased to Elford Parish Council for the use of the local Cricket Club which is on a 99 year lease expiring 14<sup>th</sup> May 2089.
- 5.4 In negotiating any new lease it will be appropriate to reconsider other terms including rent. The lease plan will remain as existing, see appendix 1.
- 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 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 continuation of the playing field lease supports these objects.
- 5.6 **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 including disposal in the Trusts 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. The Trust has a strong revenue stream principally from the letting of the main land holding comprised in Home Farm plus other smaller lettings.

<b>6.</b>	<b>Evaluation of alternative option(s):</b>
6.1	Do nothing. The lease will continue uninterrupted until 2032 and therefore there is no requirement for the Trust to extend the lease at this stage if it chooses not to.
6.2	Grant a lesser term than requested but if so there would seem to be little benefit to either party to do so prior to the natural renewal point in 2032.
6.3	As has been noted, the school playing field directly adjoins land leased to Elford Parish Council for the use of the local Cricket Club. This was granted for 99 years expiring 14 <sup>th</sup> May 2089. It may then be most appropriate that the grant of any new lease to the Academy for the school playing field be limited to matching that expiry date.
<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 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.	
2. Existing lease dated 1 <sup>st</sup> July 1997	
<b>List of Appendices accompanying this Report (if any):</b>	
1. Lease Plan.	





**Birmingham City Council** Map Created By:

Date of Map Creation: 28/07/2015

**Notes**



Scale:  
1:1,250

**BIRMINGHAM CITY COUNCIL – "COUNCIL AS TRUSTEE"**

**PUBLIC REPORT**

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

**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.

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<b>E-mail address:</b>	<a href="mailto:nigel.g.oliver@birmingham.gov.uk">nigel.g.oliver@birmingham.gov.uk</a>
<b>Telephone No:</b>	Helen Juffs – Surveyor, Birmingham Property Services
<b>E-mail address:</b>	0121 464 1624 <a href="mailto:helen.juffs@birmingham.gov.uk">helen.juffs@birmingham.gov.uk</a>

<b>3.</b>	<b>Consultation</b>
	Consultation should include those that have an interest in the decisions recommended.
<b>3.1</b>	<b>Internal</b> Officers in the Parks Service have been consulted and have raised no objections.
<b>3.2</b>	<b>External</b> 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.
<b>4.</b>	<b>Compliance Issues:</b>
<b>4.1</b>	<b><u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></b> 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.
<b>4.2</b>	<b><u>Financial Implications</u></b> (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.
<b>4.3</b>	<b><u>Legal Implications</u></b> 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.  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.
<b>4.4</b>	<b><u>Public Sector Equality Duty (see separate guidance note)</u></b> 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.

## **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 properly 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.

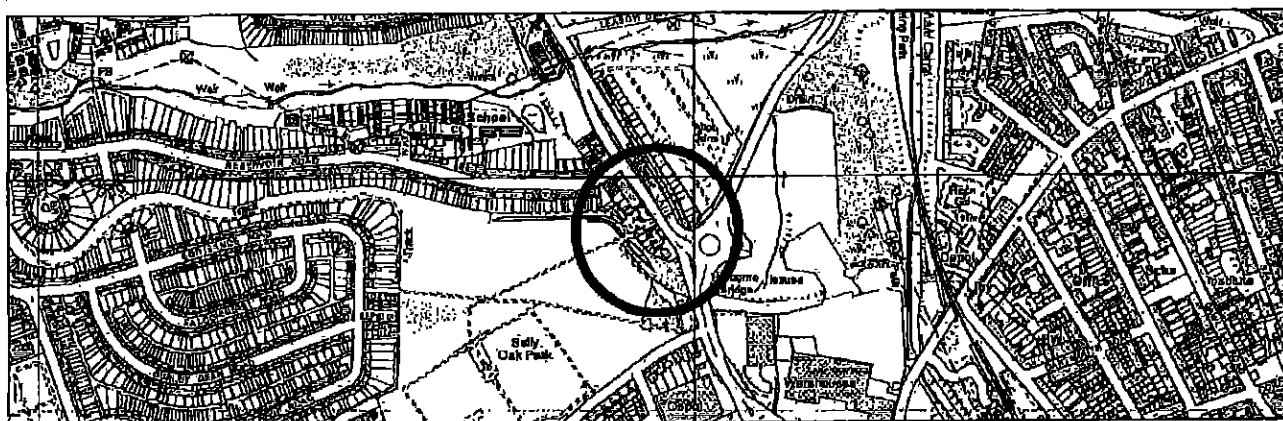
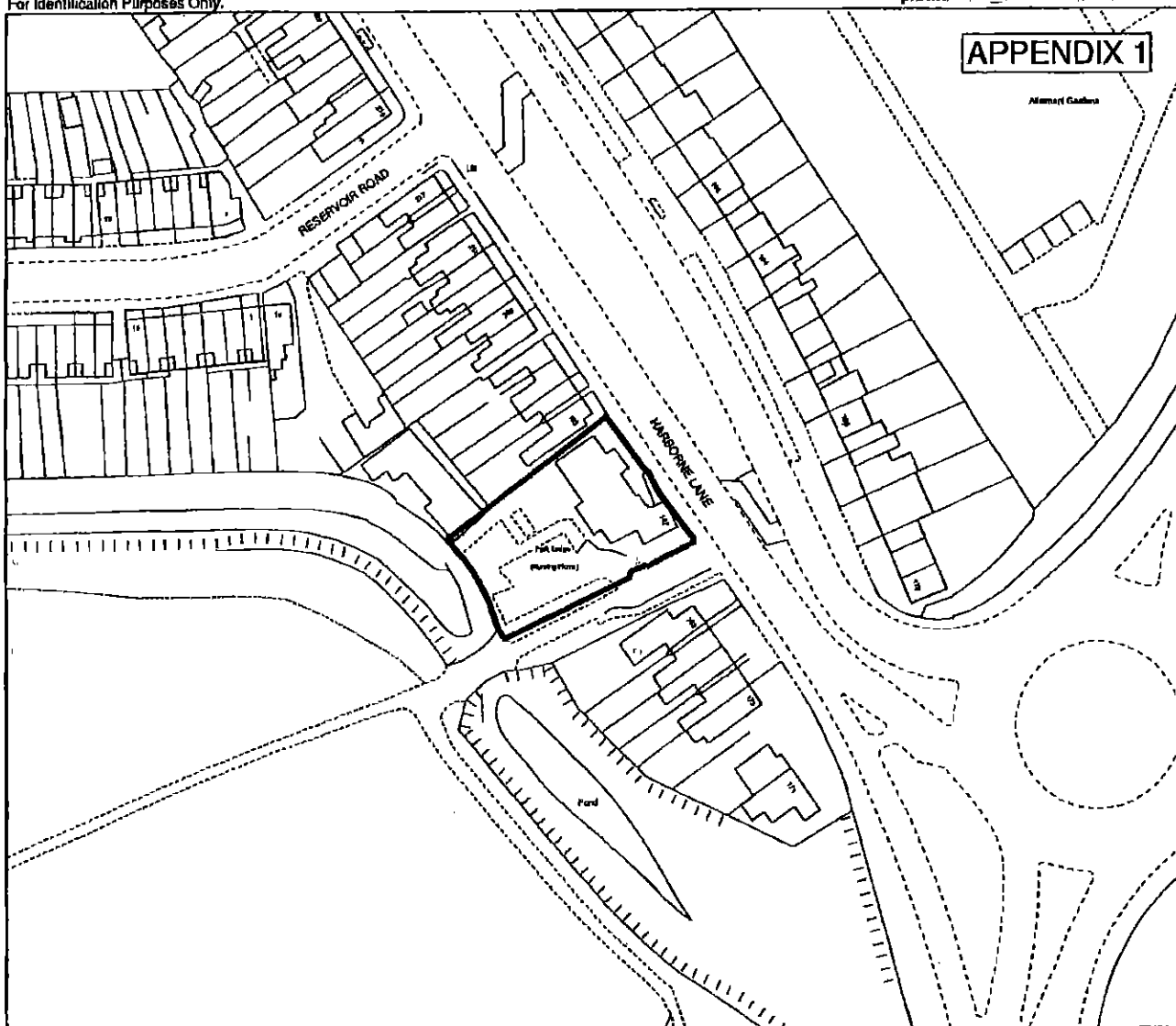
<b>6. Evaluation of alternative option(s):</b>	
6.1	Do nothing. There is not a 'do nothing' option. Action must be taken as the Lessee is legitimately in occupation but currently operating a business without full consent of the landlord, and the passing rent is minimal.
6.2	Take legal action against 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.
<b>7. Reasons for Decision(s):</b>	
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.

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

# APPENDIX 1

Alameda Gardens



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187 Harborne Lane  
Selly Oak



Scale (Main Map)

1:1,250

Drawn

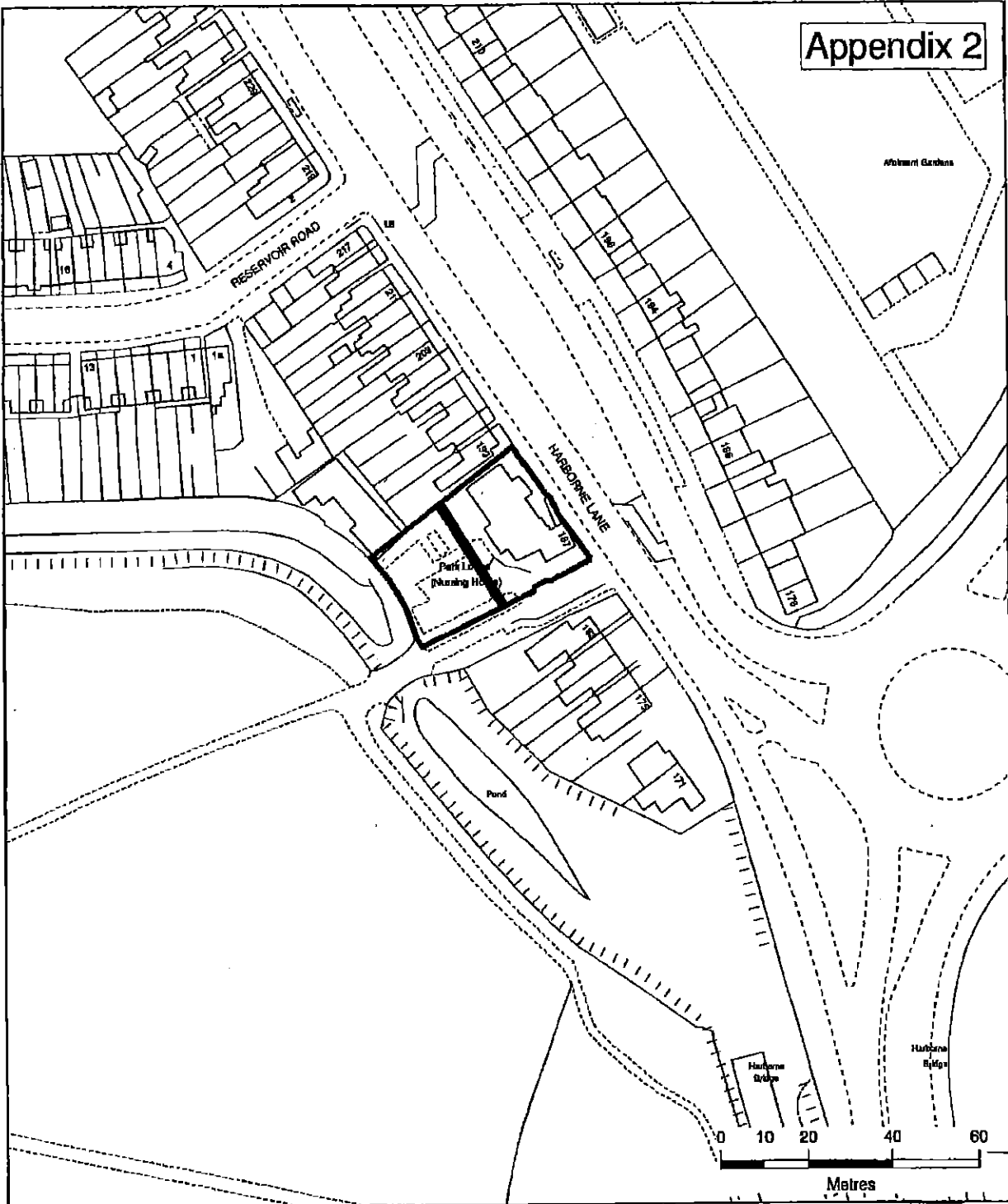
Bharat Patel

Date

08/04/2016

O.S.Ref. SP0382NE

## Appendix 2



**Birmingham City Council**

187 Harborne Lane  
Selly Oak



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SCALE

1:1,250

DRAWN

Bharat Patel

DATE

08/04/2016

O.S.Ref. SP0382NE

