

**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**

**COUNCIL AS TRUSTEE**

**TUESDAY, 12 SEPTEMBER 2017 AT 13:45 HOURS**  
**IN COUNCIL CHAMBER, COUNCIL HOUSE, VICTORIA SQUARE,**  
**BIRMINGHAM, B1 1BB**

**A G E N D A**

**1 NOTICE OF RECORDING**

Lord Mayor to advise that this meeting will be webcast for live or subsequent broadcast via the Council's Internet site ([www.birminghamnewsroom.com](http://www.birminghamnewsroom.com)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

**5 - 8**

**2 MINUTES**

To confirm and authorise the signing of the Minutes of the Meeting of the Council as Trustee held on 4 April 2017.

**9 - 48**

**3 A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY COUNCIL AS TRUSTEE**

To consider a report of Trusts and Charities Committee.

**Councillor Rehman to move the following Motion:**

"That Full Council sitting as 'Council as Trustee':

**A 669 Bristol Road - former Selly Oak Library**

- i) approves that the land held in trust at 669 Bristol Road comprising the former Library can be disposed of on terms to be agreed;
- ii) and to submit to the Charity Commission an application for a Scheme/Order allowing the trust the necessary additional powers to undertake the disposal of 'specie' land;
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.

**B Calthorpe Park - lease to Health & Wellbeing Service Mutual Organisation**

- i) agrees the occupation of the premises on the trust's land to be regularised by the grant of a formal lease;
- ii) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and if appropriate an Order to permit a disposal to a 'connected person';
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises;
- iv) authorises the disposal by way of a lease for up to 25 years from an early date to be agreed, of the land currently allocated to the Service being granted to the Health & Wellbeing Service or its mutual organisation once established.

C Small Heath Park - Lease of Small Heath Park Lodge

- i) agrees the Lodge should be brought back into community use and any occupation regularised by the grant of a formal lease;
- ii) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal;
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises;
- iv) authorises the disposal by way of a lease for up to 35 years from an early date to be agreed, of the land of the former Lodge and gardens area.

D Cropwood Estate - Rosemary Cottage partial release of restrictive covenant

- i) the restrictive covenant against the land shown on the plan in Appendix 1 be amended by Deed to allow only the proposed development.

E Cropwood Estate - Hunters Hill Technology College use of land

- i) the land identified as parcels C and D in Appendix 1 of the attached report to the Trusts and Charities Committee dated 19 July 2017 be let to the College on terms to be agreed;
- ii) the remaining land is advertised as available to let marketed generally for agricultural use;
- iii) and if it is determined that the letting to the College being directly operated by Birmingham City Council requires that an application for a Scheme/Order from the Charity Commission allowing the trust the necessary additional powers to undertake the disposal to a 'connected person' that can also be made.

and

that the Assistant Director of Property (Interim) be authorised to negotiate and agree the terms of all agreements on behalf of the Trusts and that the City

Solicitor be authorised to prepare, negotiate, execute, seal and complete all necessary documentation, including the making of applications to the Charity Commission for any purposes required to give effect to the above decisions and also to place any formal advertisements required under either s123 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land.





<b>COUNCIL AS TRUSTEE 4 APRIL 2017</b>
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**MINUTES OF A MEETING OF THE  
COUNCIL AS TRUSTEE COMMITTEE  
HELD ON TUESDAY 4 APRIL 2017  
AT 1345 HOURS IN THE COUNCIL CHAMBER,  
COUNCIL HOUSE, BIRMINGHAM**

**PRESENT:-** Lord Mayor (Councillor Carl Rice) in the Chair.

**Councillors**

Uzma Ahmed	Peter Douglas Osborn	Mike Leddy
Mohammed Aikhlaq	Barbara Dring	Bruce Lines
Deirdre Alden	Neil Eustace	John Lines
John Alden	Mohammed Fazal	Keith Linnecor
Robert Alden	Des Flood	Mary Locke
Nawaz Ali	Jayne Francis	Ewan Mackey
Tahir Ali	Matthew Gregson	Majid Mahmood
Sue Anderson	Carole Griffiths	Karen McCarthy
Gurdial Singh Atwal	Peter Griffiths	Gareth Moore
Mohammed Azim	Paulette Hamilton	Yvonne Mosquito
Susan Barnett	Andrew Hardie	Brett O'Reilly
David Barrie	Roger Harmer	John O'Shea
Bob Beauchamp	Kath Hartley	David Pears
Matt Bennett	Barry Henley	Robert Pocock
Kate Booth	Des Hughes	Hendrina Quinnen
Steve Booton	Jon Hunt	Habib Rehman
Sir Albert Bore	Mahmood Hussain	Fergus Robinson
Barry Bowles	Timothy Huxtable	Gary Sambrook
Randal Brew	Mohammed Idrees	Valerie Seabright
Marje Bridle	Zafar Iqbal	Rob Sealey
Mick Brown	Ziaul Islam	Shafique Shah
Alex Buchanan	Kerry Jenkins	Mike Sharpe
Andy Cartwright	Meirion Jenkins	Sybil Spence
Tristan Chatfield	Simon Jevon	Claire Spencer
Zaker Choudhry	Julie Johnson	Stewart Stacey
Debbie Clancy	Brigid Jones	Ron Storer
John Clancy	Carol Jones	Paul Tilsley
Lynda Clinton	Josh Jones	Karen Trench

## **Council as Trustee – 4 April 2017**

Lyn Collin	Nagina Kauser	Margaret Waddington
Maureen Cornish	Tony Kennedy	Ian Ward
John Cotton	Changeese Khan	Mike Ward
Basharat Dad	Mariam Khan	Ken Wood
Phil Davis	Narinder Kaur Kooner	Alex Yip
Diane Donaldson	Chaman Lal	

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### **NOTICE OF RECORDING**

- 22 The Lord Mayor advised that the meeting would be webcast for live and subsequent broadcasting via the Council's internet site and that members of the Press/Public may record and take photographs except where they were confidential or exempt items.

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### **MINUTES OF LAST MEETING**

- 23 **RESOLVED:-**

That the Minutes of the meeting of Council as Trustee held on 7 February 2017, having been printed and a copy sent to each Member of the Council, be taken as read and confirmed and signed.

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### **A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY COUNCIL AS TRUSTEE**

The following report of the Chair of the Trusts and Charities Committee was submitted:-

(See document No. 1)

Councillor Habib Rehman moved the motion which was seconded.

A debate ensued.

Councillor Habib Rehman replied to the debate.

The Motion having been moved and seconded was put to the vote and by a show of hands was declared to be carried.

It was therefore -

**RESOLVED:-**

That Full Council sitting as 'Council as Trustee':

A. Burbury Park – Disposal of former Park Keepers Lodge

- i) Approves that part of the land held in trust at Burbury Park comprising the former Park Lodge and gardens can be disposed of on terms to be agreed;
- ii) and to submit to the Charity Commission an application for a Scheme/Order allowing the trust the necessary additional powers to undertake the disposal of 'specie' land;
- iii) and if it is determined that the property be managed best by transfer to Birmingham City council that an application for a Scheme/Order allowing the trust the necessary additional powers to undertake the disposal to a 'connected person' also be made.

B. Sparkhill Park – Grant of Cable Wayleave Providing Electricity to the new Leisure Centre

- i) approves the installation of an underground cable across Sparkhill Park to the Leisure Centre and that the installation be formally documented by the grant of a wayleave agreement together with associated rights of way over the park, on terms to be agreed.

C. Elford Estate – Grant of Leases of Public Open Space Areas to Elford Parish Council

- i) approves the proposal to grant long leases (expiring up to 14th May 2089) to the Elford Parish Council.

D. Elford Estate – Disposal of Land at The Gardens

- i) approves the proposal to dispose of the freehold interest of the land.

And

that the Director of Property be authorised to negotiate the terms of all agreements and that the City Solicitor be authorised to prepare, negotiate, execute, seal and complete all necessary documentation, including the making of applications to the Charity Commission for any purposes required to give effect to the above decisions and also to place any formal advertisements required under either s123 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land.

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The meeting ended at 1400 hours.

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CHAIRMAN



**REPORT OF TRUSTS AND CHARITIES COMMITTEE****A MULTIPLE REPORT ON PROPERTY MATTERS FOR DECISION BY  
COUNCIL AS TRUSTEE.**

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**1. PURPOSE/SUMMARY**

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To seek formal approval from Council as Trustee to the Motions proposed for each of the matters set out below which after consideration at earlier Trust and Charities Committee meetings are recommended to proceed.

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**2. BACKGROUND**

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**Governance arrangements**

The City Council is Sole Corporate Trustee for a number of charitable trusts. Whereas day-to-day management decisions are delegated to the Trusts and Charities Committee only Full Council sitting as “Council as Trustee” can sanction disposals or major changes on trust land. Disposals include but are not limited to the grant of leases, licences, easements and wayleaves.

Each charitable trust is governed by the deed under which it was established, and/or by a Charity Commission Scheme or Order where applicable. These documents will usually set out Trustees powers, as well as the objects or purposes for which the charitable trust was created.

Generally, a disposal of charitable land can only occur where the Trustees have either an express power of disposal within the Deed and/or Charity Commission Scheme, or can rely on an implied power under the Trusts of Land and Appointment of Trustees Act 1996 (the “1996 Act”. In some cases trust deeds do not provide a power of disposal and it is not possible to rely on the provisions of the 1996 Act. In those circumstances, the Trustee will need to make application to the Charity Commission for the grant of a Scheme of new management powers or an Order for the specific action. The Commission would only provide a Scheme or Order, if the Trustee can clearly demonstrate that the decision proposed is expedient in the interests of the Trust.

It is a requirement of the Charities Act 2011 that any charitable trust must carefully consider the method of disposal and achieve best value, although there are some statutory exceptions to this requirement when dealing with other charities. Where the Trusts and Charities Committee are recommending a sale of trust property, to ensure compliance with the Charities Act, it is currently most likely that the disposal will proceed by way of auction subject to a suitable reserve being set but other methods will be considered. Properties leased out will generally be advertised to the open market to ensure best value, again in compliance with the Charities Act 2011.

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### 3. MATTERS TO BE DETERMINED

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#### A. 669 Bristol Road – former Selly Oak Library

Selly Oak Library was constructed and gifted to Birmingham City Council by Thomas Gibbins on 29<sup>th</sup> June 1904 and has been used for library purposes ever since. The Library closed on 1<sup>st</sup> April 2017 and proposals for its future use continue to be discussed but a release of the property in any form will be a disposal for the purposes of the Charities Act 2011. It has only recently been determined that the Library is held in trust so day to day management rests with the Trusts and Charities Committee. However, the trust deed for the Library contains no trustee power of disposal and it is not possible to rely on the 1996 Act because the premises are treated as ‘specie’ or designated land, so officers will need to make an application to the Charity Commission to seek appropriate new powers.

At its meeting on the 19<sup>th</sup> April 2017 the Trusts and Charities Committee acknowledged that the premises could no longer be used as gifted to the Council, and were therefore surplus to requirements and agreed to recommend that the property could be disposed of on terms to be agreed, compliant with all requirements set out in the Charities Act 2011. The capital receipt must be ring-fenced to the Trust and used to further the objects or purposes of the original trust, and substantially similar trust. The report proposed that as discussions continue that a further report be brought to Trust and Charities Committee for ratification once a route for disposal was agreed. It is still hoped that a sympathetic use compliant with the former uses might be found but otherwise this may require also a removal or relaxation of the restrictive covenants limiting the use of the property.

The land is held in trust and formal approval to the disposal or transfer and the actions required to effect this is now needed.

#### B. Calthorpe Park – lease to Health & Wellbeing Service Mutual Organisation

Calthorpe Park has been operated as a public park since 1857 with the land owned by Lord Calthorpe being transferred to the City in 1894. It is not a registered Charity but the specific objects of the trust are simply to ‘*use of the premises as a public park*’. The premises are treated as ‘specie’ or designated land. A play centre has been on the land since the 1980’s and has grown considerably since. This is now managed by the Health & Wellbeing service which desires to continue operating from this location and require their occupation to be formalised. A release of the property in any form will be a disposal for the purposes of the Charities Act 2011 but in all the time the trust has been in operation it has not obtained powers to deal with the property and before making decisions on disposal will need to make an application to the Charity Commission to seek appropriate new powers.

At its meeting of 19<sup>th</sup> July 2017 the Trusts and Charities Committee acknowledged that the occupation of part of the Park by the Health & Wellbeing service was an appropriate use of part of the park provided they continue to encourage healthy lifestyles, exercise and playing of sports. The Committee agreed to recommend that the property now used could be disposed of on a lease at terms to be agreed, compliant with all requirements set out in the Charities Act 2011 subject to making all appropriate applications to the Commission to obtain a Scheme of powers for the better management of the trust estate or an Order sanctioning the disposal of some designated land. All capital receipts will be ring-fenced to the Trust and must be used to further the objects or purposes of the trust.

The land is held in trust and formal approval to the disposal or transfer and the actions required to effect this is now needed.

### C. Small Heath Park – lease of Small Heath Park Lodge

Small Heath Park is held on the remainder of a 900 year lease from 29<sup>th</sup> September 1876 with the freehold being held by the beneficiaries of the estate of Miss Louisa A Rylands. It was acquired under powers in the Birmingham Parks Act 1854 but is treated as a gift and is held as a charitable trust. This is not a registered charity. The terms of the gift require the Park to be used for '*providing for the inhabitants of the City, parks and other places of healthful and pleasurable resort*'. An application to the Charity Commission to obtain powers for the better management of the trust holdings including power of disposal and to seek an Order from the Commission sanctioning the disposal of designated land is needed in order to extend the range of activities to include those necessary for the successful operation of a community facility at the lodge.

At its meeting of 19<sup>th</sup> July 2017 the Trust and Charities Committee acknowledged that the occupation of the Lodge and gardens thereof by a community group chosen by way of a formal selection process was appropriate, subject to further approvals and agreed to recommend that the property now identified could be disposed of on a lease at terms to be agreed, compliant with all requirements set out in the Charities Act 2011 subject to making all appropriate applications to the Commission to obtain a Scheme of powers for the better management of the trust estate or an Order sanctioning the disposal of some designated land.

All capital receipts will be ring-fenced to the Trust and must be used to further the objects or purposes of the trust.

The land is held in trust and formal approval to the disposal and the actions required to effect this is now required.

### D. Cropwood Estate – Rosemary Cottage partial release of restrictive covenant

Between 1921 and 1938 Barrow Cadbury and Mrs Geraldine Cadbury gifted approximately 36.5 hectares of land for school's use although the specific objects of the Cropwood Estate trust are now very wide ranging. This gift included Rosemary Cottage, a substantial detached house, which was disposed of on 26<sup>th</sup> February 1999 when a restrictive covenant limiting the premises to being a single family residence was imposed. The current owners of Rosemary Cottage wish to develop an additional unit over the detached garage and at its meeting of 19<sup>th</sup> July 2017 the Trusts and Charities Committee acknowledged that the proposal was not detrimental to the Estate but that it was appropriate for the restrictive covenant to be released to allow this particular development only, subject to the negotiation of suitable terms for its release in compliance with the Charities Act 2011 and at market value in order that the Trust is sufficiently compensated. All receipts will be ring-fenced to the Trust. The Trust already has all necessary powers to enable the transaction to be completed.

The Cropwood Estate is a registered charity no. 1085296. The land is held in trust and formal approval to the disposal and the actions required to effect this is now required.

### E. Cropwood Estate – Hunters Hill Technology College use of land

Of the 36.5 hectares of land originally gifted at Cropwood by Barrow Cadbury and Mrs Geraldine Cadbury referred to at D above, approximately half is used for the College campus, whilst the remaining was anticipated to be used as pasture land and woods to be let on agricultural tenancies to provide an income to the Trust. The 13.34 hectares of pasture is now vacant and it is required that the trustees secure new tenants for the land. However, the College now include farm studies in their pupil curriculum and currently have use of 1.60 hectares of land dedicated for these purposes. The College now desire to increase the number and range of livestock and therefore seek additional land.

At its meeting of 19<sup>th</sup> July 2017 the Trusts and Charity Committee acknowledged that the proposal by the College to take more land into direct occupation was not detrimental to the objects of the trust or the future management of the Estate and it was prepared to recommend that a further 7.01 hectares of land be let to the College subject to the negotiation of suitable terms for its disposal such terms to be in compliance with the Charities Act 2011. The remaining land will be let in the open market on appropriate formal tenancies. Any receipts will be ring-fenced to the Trust and must be used to further the objects or purposes of the trust. The Trust already has all necessary powers to enable the disposal to proceed. It is noted that the College have a Charity arm, the Hunters Hill Charitable Trust and it may be appropriate that the letting is to that Charity.

The Cropwood Estate is a registered charity no. 1085296. The land is held in trust and formal approval to the disposal and the actions required to effect this is now required.

### **MOTIONS**

That Full Council sitting as 'Council as Trustee':

A. 669 Bristol Road – former Selly Oak Library

- i) approves that the land held in trust at 669 Bristol Road comprising the former Library can be disposed of on terms to be agreed;
- ii) and to submit to the Charity Commission an application for a Scheme/Order allowing the trust the necessary additional powers to undertake the disposal of 'specie' land
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.

B. Calthorpe Park – lease to Health & Wellbeing Service Mutual Organisation

- i) agrees the occupation of the premises on the trust's land to be regularised by the grant of a formal lease.
- ii) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and if appropriate an Order to permit a disposal to a 'connected person'

- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- iv) authorises the disposal by way of a lease for up to 25 years from an early date to be agreed, of the land currently allocated to the Service being granted to the Health & Wellbeing Service or its mutual organisation once established.

C. Small Heath Park – lease of Small Heath Park Lodge

- i) agrees the Lodge should be brought back into community use and any occupation regularised by the grant of a formal lease.
- ii) authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal
- iii) authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- iv) authorises the disposal by way of a lease for up to 35 years from an early date to be agreed, of the land of the former Lodge and gardens area

D. Cropwood Estate – Rosemary Cottage partial release of restrictive covenant

- i) the restrictive covenant against the land shown on the plan in Appendix 1 be amended by Deed to allow only the proposed development

E. Cropwood Estate – Hunters Hill Technology College use of land

- i) the land identified as parcels C and D in Appendix 1 of the attached Report to the Trusts and Charities Committee dated 19 July 2017 be let to the College on terms to be agreed
- i) the remaining land is advertised as available to let marketed generally for agricultural use
- ii) and if it is determined that the letting to the College being directly operated by Birmingham City Council requires that an application for a Scheme/Order from the Charity Commission allowing the trust the necessary additional powers to undertake the disposal to a 'connected person' that can also be made

and

that the Assistant Director of Property (Interim) be authorised to negotiate and agree the terms of all agreements on behalf of the Trusts and that the City Solicitor be authorised to prepare, negotiate, execute, seal and complete all necessary documentation, including the making of applications to the Charity Commission for any purposes required to give effect to the above decisions and also to place any formal advertisements required under either s123 of the Local Government Act 1972 or the various statutes as may relate to the charitable status of the land.

## **Appendix**

1. Various Reports presented to Trusts and Charities Committee on the dates referenced above.

Chairman of the Trusts and Charities Committee

.....  
Councillor Habib UL Rehman

**BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE**

**PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>Assistant Director of Property (Interim)</b>
<b>Date of Decision:</b>	<b>19 April 2017</b>
<b>SUBJECT:</b>	<b>669 BRISTOL ROAD – FORMER SELLY OAK LIBRARY</b>
<b>Wards affected:</b>	<b>Selly Oak</b>

**1. Purpose of report:**

- 1.1 To seek approval to obtain revised management powers including powers of disposal for 669 Bristol Road, held in trust, being the former Selly Oak Library and progress a disposal of the property.

**2. Decisions recommended:**

That the Committee

- 2.1 notes the Selly Oak Library was closed on 1<sup>st</sup> April 2017 and neither the Library Service nor Birmingham City Council are seeking to re-use the building
- 2.2 authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal
- 2.3 authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- 2.3 subject to an evaluation of all options for the future use of the building, agrees to the decision in principle that, if this is in the best interests of the charitable trust, the building should be disposed of and where this is the case the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval
- 2.4 delegates to the Assistant Director of Property (Interim) authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the property and negotiate the terms of any disposal
- 2.5 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation including the applications to the Charity Commission to give effect to the above recommendations and to remove or amend the restrictive covenant and to apprise the Committee of the results of the applications and consultation.

<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

### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Officers in the Community Library Service have undertaken all consultation and included the closure in their report Community Library Service Tiered Delivery Model to Cabinet on 14<sup>th</sup> February 2017.

##### External

Public consultation on the closure is complete and further consultation regarding this report is not required nor envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them.

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

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision-making to the Trusts and Charities Committee with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards. The re-organisation of the Community Library Service will result in the library being vacant and at risk requiring the Trust to respond to the current challenge.

The former Selly Oak Library premises are held freehold. The land and property was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any powers to deal with the property or manage the trust. As the premises are also designated land, the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance. Disposal in this instance may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties including the City Council should they choose to re-use it. Lettings to connected persons including Birmingham City Council would also be subject to a specific application for approval from the Charity Commission.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent. The trustees are responsible for ensuring appropriate cost controls are in place. Running costs for the premises are currently covered by the Community Library Service and this will continue for some time until the premises are declared surplus. Any disposals be conducted in line with statutory processes set out in the Charities Act 2011 and that the proceeds of any sale be ring-fenced and invested in trust for the Charity or applied cy-pres in the event that the charity is wound up. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer. Any fee for this will be reclaimed from any capital receipt. Disposal will mean there is no continuing cost to the Trust.

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

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

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

- 4.1 The site was provided by gift on 29<sup>th</sup> June 1904 for the erection of a public library by Thomas Gibbins who owned the Birmingham Battery and Metal Company nearby and the construction of the building was funded by Andrew Carnegie as part of a philanthropic programme of developing libraries in the USA and Britain. The Library was officially opened by Thomas Gibbins on 23<sup>rd</sup> June 1906. The original gift was to the Kings Norton & Northfield Urban District Council and following local authority reorganisation transferred to Birmingham Corporation on 9<sup>th</sup> November 1911. The property was Listed Grade 2 on 18<sup>th</sup> February 2011.
- 4.2 Following approval of the Community Library Service review report at Cabinet in February 2017 it has been determined that the Library will be closed on 1<sup>st</sup> April 2017. It is proposed that some library provision will be continued in a private building nearby.
- 4.3 This is not a registered charity and has only recently been declared to be held in trust on examination of the deeds once the decision to close was made known. The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for change and currently there is no ability to provide an alternative use for the premises. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so in this instance will require change. To better protect the assets the Trust must have available appropriate powers to let or if required dispose of property. The objects of the charity are currently very narrow and therefore could not likely be met by other users but a proposal to dispose would enable the property to be brought back into use by others quickly at no cost to the trust but delivering a capital receipt or revenue income from rent.
- 4.4 If, as appears likely, the property is declared surplus to by the Library Service and disposal is judged to be in the best interests of the trust the preference is to sell the freehold interest as the BCC/Trust responsibilities would be brought fully to an end but alternative means of disposal such as a long lease will also be considered. Other applications will need to be made to remove or amend the restrictive covenant limiting the premises to library use only otherwise it is unlikely any future user can be found.
- 4.5 **Aims and Objectives of the Trust**  
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust are simply to 'use of the premises as a public library'.
- 4.6 **Trustee Powers**  
A trusts constitution is set out within the executed Trust Deed for each property principally the acquisition deeds or as amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers exist or can be obtained for the Trustees to make decisions on the future of the assets including disposals.
- 4.7 **Trust Finances**  
The property has been managed and maintained by Birmingham City Council Community Library Service but is not in good condition. The sole asset of the trust is the property. The trust has no revenue or capital investments.

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

This report seeks approval to make applications to amend the restrictive covenant and gain appropriate powers for future management or disposal of the property. To do nothing is not an appropriate option as the building will remain at risk.

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

- 6.1 To better safeguard the Trust's assets overall, bringing vacant buildings back into beneficial use or converting property liabilities to monetary assets.

**Signatures:**

Chief Officer(s): .....

Dated: .....

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

1. Deed of Acquisition dated 29<sup>th</sup> June 1904

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

1. Plan of the premises.



AREA EDGED RED

499

SQ. METRES APPROX.

597

SQ. YARDS APPROX.



**Birmingham**  
City Council

(Former) Selly Oak Library  
669 Bristol Road  
Selly Oak



Waheed Nazir  
Corporate Director, Economy  
1 Lancaster Circus  
Birmingham  
B2 2GL

SCALE

1:1,250

DRAWN

MI

DATE

05/04/2017

O.S.Ref SP0482NW

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>Service Director - Sport, Events, Open Space and Wellbeing</b>
<b>Date of Decision:</b>	<b>19 July 2017</b>
<b>SUBJECT:</b>	<b>CALTHORPE PARK – LEASE TO HEALTH &amp; WELLBEING SERVICE MUTUAL ORGANISATION</b>
<b>Wards affected:</b>	<b>Hall Green</b>

**1. Purpose of report:**

- 1.1 To seek approval to obtain revised management powers for Calthorpe Park, held in trust, including a power of disposal and to grant a lease of part to the Health & Wellbeing Service or the mutual organisation to be formed.

**2. Decisions recommended:**

That the Committee

- 2.1 notes the Health & Wellbeing Service now manages the former Calthorpe Park Play Centre on Edwards Road and wish to continue the provision of services from this hub location and that the Service transformation being proposed as set out in the proposed Cabinet report seeks approval to facilitate the establishment of a community benefit society (also known as a mutual) to deliver the council outcomes currently being delivered through the Wellbeing Service and that this change will require the occupation of the premises on the trust's land to be regularised by the grant of a formal lease.
- 2.2 authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for the better management of the trust assets including a power of disposal and if appropriate an Order to permit a disposal to a 'connected person'
- 2.3 authorises the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenant limiting the use of the premises.
- 2.4 authorises the disposal by way of a lease for up to 25 years from an early date to be agreed, of the land currently allocated to the Service being granted to the Health & Wellbeing or its mutual organisation once established, and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval
- 2.5 delegates to the Assistant Director of Property (Interim) authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of the property and negotiate the terms of any disposal
- 2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease including the applications to the Charity Commission to give effect to the above recommendations and to remove or amend the restrictive covenant and to apprise the Committee of the results of the applications and consultation.

<b>Lead Contact Officers:</b>	Karen Creavin, Head of Birmingham Wellbeing Service
<b>Telephone No:</b>	0121 464 0195
<b>E-mail address:</b>	karen.creavin@birmingham.gov.uk

### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Officers in the Health & Wellbeing Service have undertaken all consultation and included the continuation of service provision at this location in their Service review report "A Sustainable Solution for the Future of the Wellbeing Service Outcomes" to be report to Cabinet.

##### External

Public consultation on the Wellbeing Service review is complete and further consultation regarding this report is not required nor envisaged except where it may be required to satisfy the requirements of the Charity Commission in support of the applications to them.

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

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision-making to the Trusts and Charities Committee with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council is responsible for ensuring the Trust is properly managed in all regards.

The re-organisation of the Health & Wellbeing Service will safeguard the provision of services to the local community which services assist the trust to meet its objects around recreational use of the Park.

Calthorpe Park is held freehold. The land and property was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any powers to deal with the property or manage the trust and the Trust will need to make applications to the Charity Commission for appropriate modern management powers including powers of disposal of property. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance. Disposal in this instance may include freehold sale and also the grant of leases or tenancies or the management of the holdings by other parties. Lettings to connected persons including Birmingham City Council would also be subject to a specific application for approval from the Charity Commission. It remains to be declared if the proposed mutual will still be a connected person for these purposes.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent. The trustees are responsible for ensuring appropriate cost controls are in place. All future running costs for the premises will continue to be covered by the Wellbeing Service. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue ring-fenced and invested in trust for the Charity. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer. Any fee for this will be reclaimed from the Wellbeing Service.

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

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

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

4.1 Calthorpe Park was the second public park in Birmingham opened 1st June 1857 on land owned by Lord Calthorpe. At that time the land was held only by 'licence'. This situation continued until 1894 when the freehold was transferred to the Birmingham Corporation with the sole restriction that the Corporation were bound to use the land only for the purposes of a recreation ground (as per the Recreation Grounds Act 1859 and Birmingham Corporation (Consolidation) Act 1883). This transfer appears to have been a gift and is treated as land held in trust.

4.2 In 1893 and 1899 the parkland was extended by further formal acquisition. These are not gifts nor have any charitable status. In 1900 land a land exchange regularised the shape of the park while enabling the adjoining housing development or the expansion of Balsall Heath. The land then accepted into the Park is treated as held in trust Other land has been added along Clevedon Road after slum clearances in the 1960's and 70's and although contiguous with the Park are not considered to be part of Calthorpe Park nor as monetary purchases will they have any charitable status. The Park continues to be very well used. This is not a registered charity.

4.3 The proposal to seek a Scheme or Order from the Charity Commission is necessary as the acquisition documents provide none of the powers required for the management of a modern trust nor any mechanism for change and currently there is no ability to provide an alternative use for the premises. It is a statutory requirement on the Trust to at all times seek to preserve and properly manage its assets. To do so in this instance will require that all occupations be properly documented. It is overdue that the activities of the Play Centre and now the Wellbeing Service is formally recognised and documented.

4.4 Other applications will need to be made to remove or amend the restrictive covenant limiting the premises to recreational uses only.

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

Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust are simply to 'use of the premises as a public park and the presence and activities of the Wellbeing Service enhance this.

#### **4.6 Trustee Powers**

A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds or as amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers exist or can be obtained for the Trustees to make decisions on the future of the assets including disposals.

#### **4.7 Trust Finances**

The sole asset of the trust is the property. The trust has no revenue or capital investments. The property to be leased has been managed and maintained by Birmingham City Council Play Service before transfer to the Health & Wellbeing Service and is in good condition.

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

This report seeks approval to make applications to amend the restrictive covenant and gain appropriate powers for future management or disposal of the property. To do nothing is not an appropriate option as the occupation of land requires to be properly regularised and this is most safely achieved by the grant of an appropriate lease.

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

- 6.1 To better safeguard the Trust's assets overall, retaining public services leading to the healthful recreation of the citizens of Birmingham within this public park.

**Signatures:**

Chief Officer(s): .....

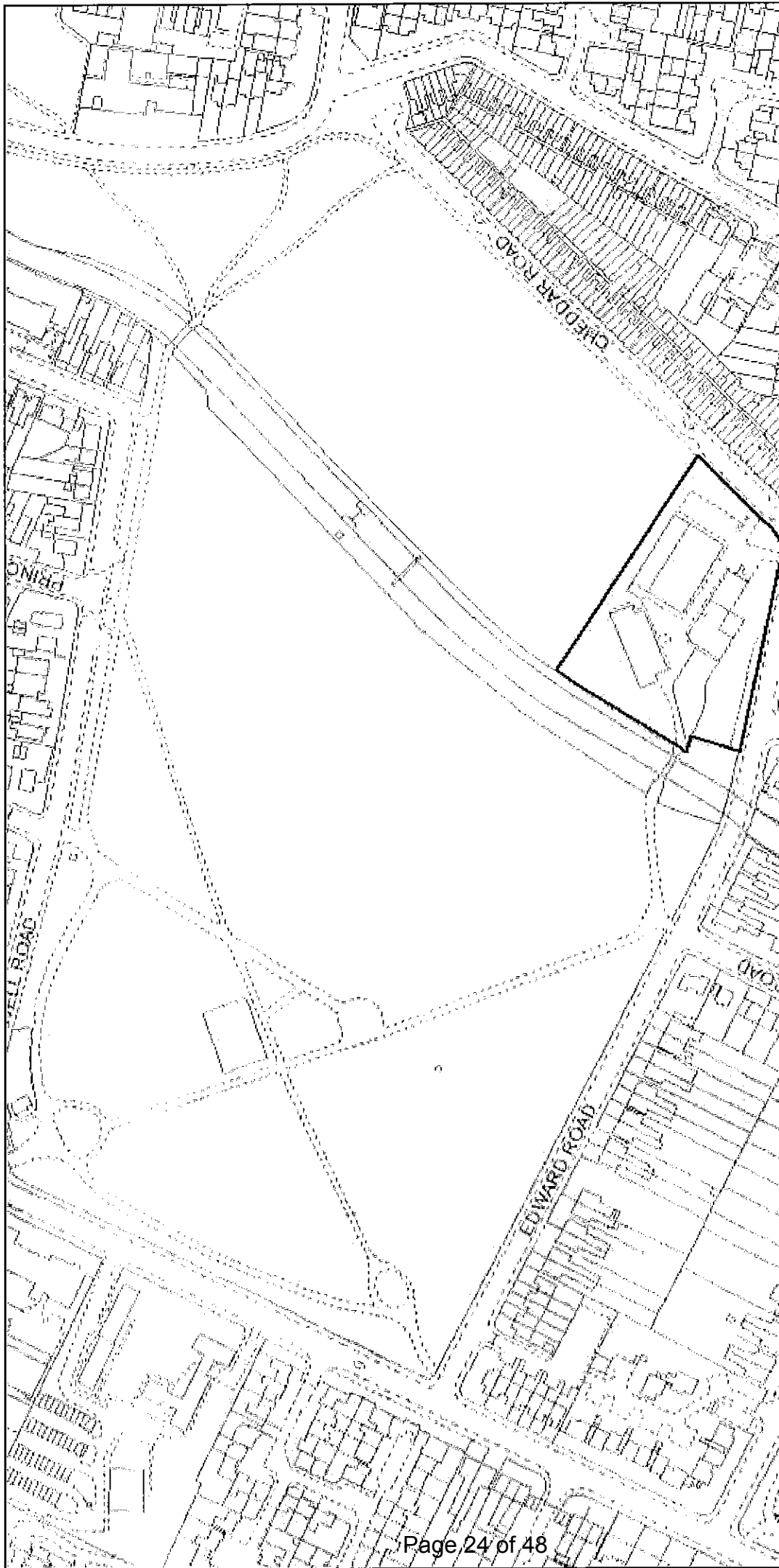
Dated: .....

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

1. Deed of Acquisition dated 29<sup>th</sup> June 1904
2. Cabinet report of 28<sup>th</sup> June 2017 "A Sustainable Solution for the Future of the Wellbeing Service Outcomes". Report deferred.

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

1. Location plan of the land used by the Wellbeing Service.



<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b>	<b>Strategic Director of Place</b>
<b>Date of Decision:</b>	<b>19 July 2017</b>
<b>SUBJECT:</b>	<b>SMALL HEATH PARK – LEASE OF SMALL HEATH PARK LODGE</b>
<b>Wards affected:</b>	<b>South Yardley</b>

**1. Purpose of report:**

To seek approval to obtain revised management powers including powers of disposal for the benefit of Small Heath Park and progress a disposal of the Lodge by way of a lease.

**2. Decisions recommended:**

That the Committee

## 2.1 notes

- the Small Heath Park Lodge has been unoccupied for many years and is in need of substantial repair before it could be brought into use but that there is demand for it to be made available for community purposes by parties who might secure such funds
- notes also that any release of land or property on trust land would be subject to formal marketing and a tenant selection process and any occupation would need to be regularised by a formal lease but before the grant could be made new powers would need to be available to the Trust.
- notes further that, subject to appropriate valuation advice, the expectation is that the capital required to bring the premises back into use will likely result in the grant of a lease at a peppercorn rent only.

2.2 authorises that applications be made to the Charity Commission to obtain either an Order or Scheme for new powers for the better management of the trust assets including powers of disposal

2.3 authorises, if necessary, the making of any applications including a Deed of Release from the giftor's representatives as landlord seeking to remove or amend the restrictive covenant limiting the use of the premises.

2.4 authorises, subject to appropriate marketing and valuation advice, the disposal by way of an underlease of up to 35 years from an early date to be agreed, of the premises formerly allocated to the Lodge and gardens and that the recommendation of the Trusts and Charities Committee be advanced to the next available meeting of the Council as Trustee for approval

2.5 delegates to the Assistant Director of Property (Interim) authority to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 and negotiate the terms of any disposal

2.6 authorises the City Solicitor to prepare, negotiate, execute, seal and complete all necessary legal documentation to grant the lease including the above applications to give effect to the recommendations and to apprise the Committee of the results of the applications and consultation.

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

### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Officers in Parks and Nature Conservation have no need of the premises and would release an appropriate area of the former gardens to support any letting. Local Members have also signalled support to have the Lodge being brought back into use.

##### External

The opportunity to lease the lodge will be made available generally to comply with all requirements for consultation, and of best value and procurement provisions in line with the Charities Act 2011.

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

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision-making to the Trusts and Charities Committee with final decisions on a disposal of land or assets being made by Council as Trustee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust documents, as amended by any Scheme approved by the Charity Commission. As trustee the City Council has a statutory duty to ensure the Trust is properly managed at all times and seeks to preserve and properly manage its assets. The use of the lodge for purposes that are not consistent with the aims of the Charity would contravene the terms of the gift. The use of the Lodge undocumented would see the trust acting in a non-compliant manner. Until appropriate modern management powers are available no lettings can take place.

The refurbishment of the Lodge will safeguard the premises, remove an eyesore and enhance the provision of services to the local community which services assist the trust to meet its objects around recreational use of the Park.

From the visit of Queen Victoria in 1887 the Park was known as Victoria Park but it is understood with the amalgamation of several local authorities in 1911 several Victoria Parks existed (including Handsworth Park) and the name was later changed to Small Heath Park.

The land and property was provided for a designated use and is regarded as 'specie land' by the Charity Commission. The trust deed does not expressly provide any modern management powers for the Trust and the Trust will need to make applications to the Charity Commission for appropriate powers including powers of disposal of property to grant the proposed lease. The provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal will not assist in this instance.

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

Duty of prudence – Trustees must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. All future running costs for the premises will be covered by any tenant or while the property remains vacant the Parks Service. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue, if any, ring-fenced to the trust. Any disposal, if approved, will be processed by officers in Legal Services and Birmingham Property Services and the valuation report will be undertaken by a qualified valuer.

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

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

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

- 4.1 The whole of Small Heath Park is held on the remainder of a 900 year lease from 29<sup>th</sup> September 1876 with the freehold being held by the beneficiaries of the estate of Miss Louisa A Rylands. It was acquired under powers in the Birmingham Parks Act 1854 but is treated as a gift and is held as a charitable trust. This is not a registered charity. The terms of the gift require the Park to be used for 'providing for the inhabitants of the City, parks and other places of healthful and pleasurable resort'. The application for a scheme will seek to extend the range of activities to include those necessary for the successful operation of a community facility at the lodge.
- 4.2 The lodge was used as a park keeper's residence until the mid-1980s after which it was used briefly as office accommodation for Parks officers but has since been vacant. It was damaged by fire and boarded up until the City Council undertook a partial refurbishment to replace the structures and roof and to ensure the premises were secured and wind and watertight. Since then there has been no further incident but the property is still estimated to require in excess of £150,000 to refurbish fully. Opportunities to let the property are limited as there is no vehicular access except over a long route through the park.
- 4.3 Interest has been expressed by several groups to make use of the lodge for office/meeting room and cafe accommodation. If the application to the Charity Commission is successful in granting general powers of disposal it may be in the best interests of the Charity to lease it in the open market. Conversely it may be in the best interests of the Charity to lease it for community purposes as the preferred option of local people.
- 4.4 On 18<sup>th</sup> January 2012 a report was brought to Trusts & Charities Committee seeking to make this same application. At the time Members first required several potential breaches to be remedied by the Parks service. Those breaches have been addressed and it is now appropriate to resubmit a report to secure appropriate powers.
- 4.5 As the Park is held leasehold other applications may be required for landlords consent.
- 4.6 **Aims and Objectives of the Trust**  
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust.
- 4.7 **Trustee Powers**  
A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds as amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention of the documents however routes exist for their amendment through Part 7 Charities Act 2011 or an Order or Scheme from the Charity Commission.
- 4.8 **Trust Finances**  
The trust has no revenue or capital investments. The Park is managed and maintained by Birmingham City Council Parks and Nature Conservation but the Lodge though supported over the years is not in good condition. The sole asset of the trust is the Park.
5. **Evaluation of alternative option:**  
This report seeks approval to make applications to amend the restrictive covenant and gain appropriate powers for future management or disposal of the property. To do nothing is not an appropriate option as the asset is in danger of being lost and its preservation is most ably achieved by reuse and the grant of an appropriate lease.

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

6.1 To better safeguard the Trust's assets overall, retaining public services leading to the healthful recreation of the citizens of Birmingham within this public park.

**Signatures:**

Chief Officer(s): .....

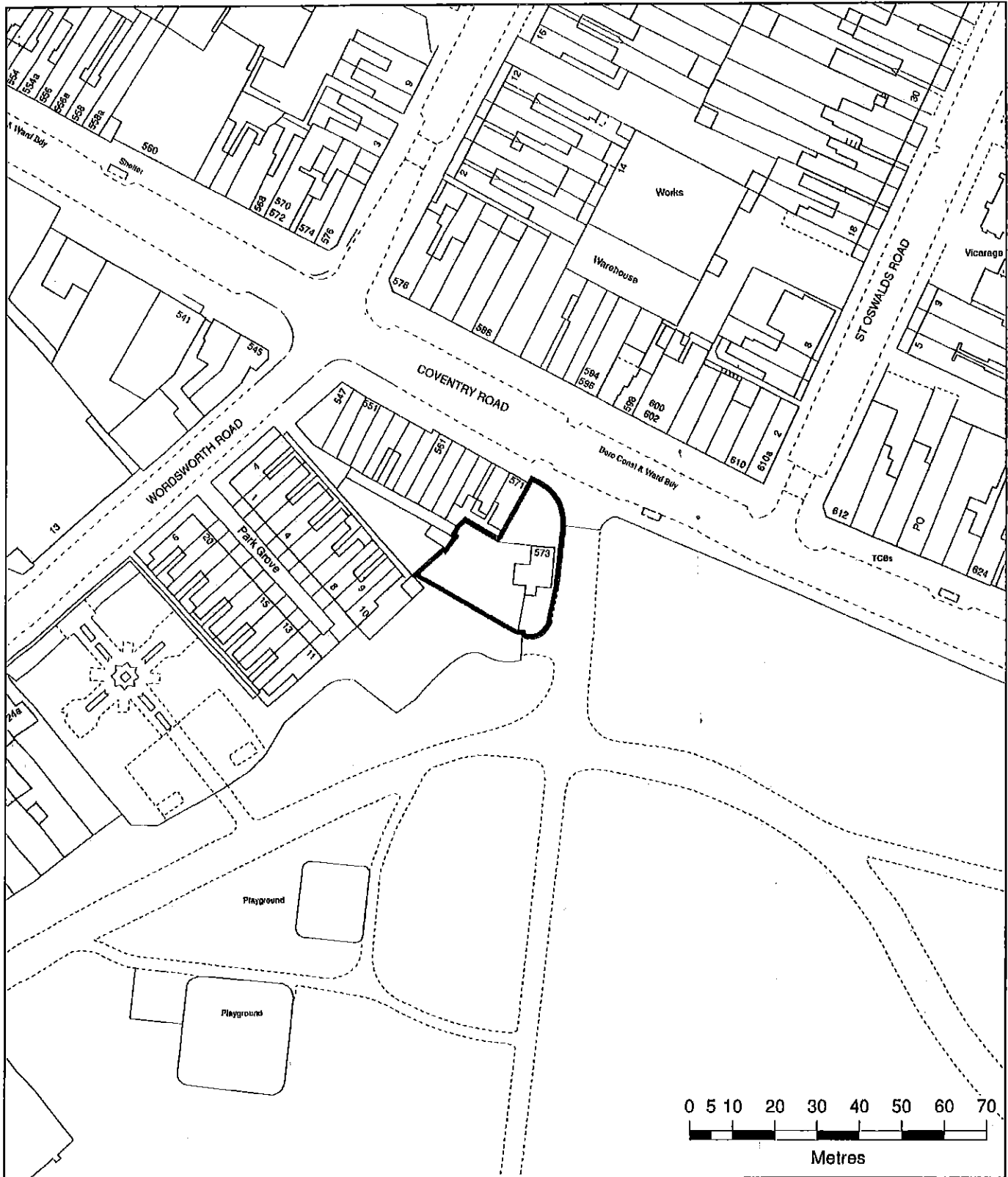
Dated: .....

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

1. Deed of Acquisition dated 29<sup>th</sup> September 1876

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

1. Plan of the Park and Lodge



AREA EDGED RED 757 SQ. METRES APPROX. 905 SQ. YARDS APPROX.



**Birmingham**  
City Council

Small Heath Park Lodge  
Coventry Road  
South Yardley



Waheed Nazir  
Corporate Director, Economy  
1 Lancaster Circus  
Birmingham, B2 2GL.

SCALE

1:1,250

DRAWN

Bharat Patel

DATE

06/07/2017

O.S.Ref SP1085NW



AREA EDGED RED 757 SQ. METRES APPROX. 905 SQ. YARDS APPROX.



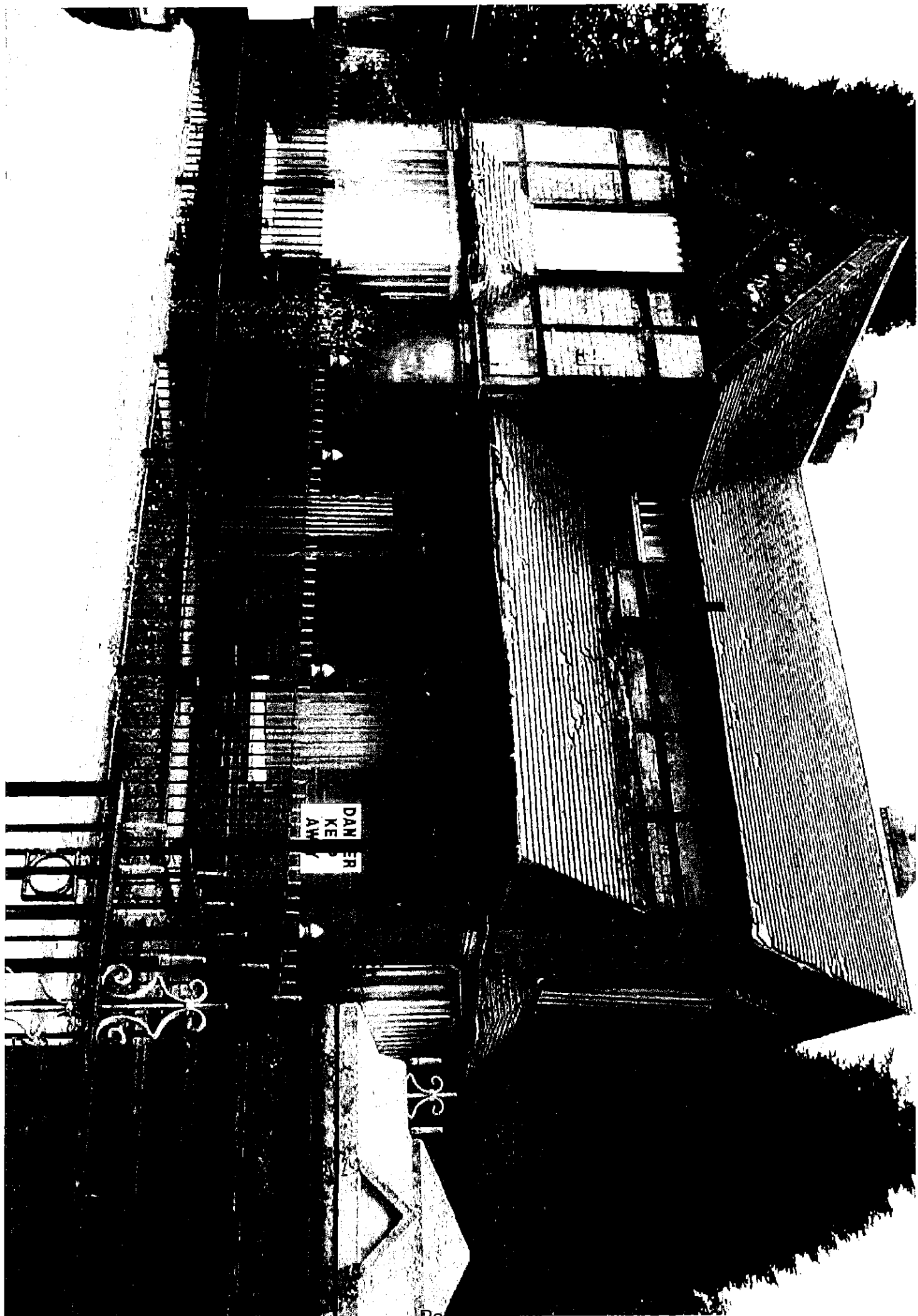
**Birmingham**  
City Council

Waheed Nazir  
Corporate Director, Economy  
1 Lancaster Circus  
Birmingham, B2 2GL.

Small Heath Park Lodge  
Coventry Road  
South Yardley



SCALE	DRAWN	DATE
1:2,000	Bharat Patel	06/07/2017
O.S.Ref SP1085NW		



**BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE**

**PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>Assistant Director of Property (Interim)</b> <b>19<sup>th</sup> July 2017</b>
<b>SUBJECT:</b>	<b>CROPWOOD ESTATE – ROSEMARY COTTAGE</b> <b>PARTIAL RELEASE OF RESTRICTIVE COVENANT</b>
<b>Wards affected:</b>	<b>Outside of the City Boundaries</b>

**1. Purpose of report:**

- 1.1 To seek approval to negotiate and settle terms for the variation of the existing restrictive covenant against development to allow the first floor of the detached garage to be converted to a residential unit.

**2. Decisions recommended:**

That the Committee recommends that

- 2.1 the restrictive covenant against the land shown on the plan in Appendix 1 be amended by Deed to allow only the proposed development
- 2.2 the recommendation of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval
- 2.3 approval be given to delegate to the Assistant Director of Property (Interim) to value and negotiate a settlement of the terms for matters in 2.1 ensuring all matters are in compliance with statutory requirements of the Charities Act 2011
- 2.4 authorises the City Solicitor to negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

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

### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Colleges request. The land is outside of the City boundaries and no Member involvement beyond the Committee is required. The Cropwood estate is nominally managed by People directorate and officers in Education are willing to support the proposal. .

##### External

Public consultation is not required but may be undertaken. The proposed development has already been subject to a Planning Application considered by Bromsgrove District Council which enabled local objections to be considered.

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

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision making to the Trusts and Charities Committee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust document as amended by any Scheme approved by the Charity Commission.

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

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

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

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects of the trust and charity law. The Trustees must act with prudence and must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. Principal revenue costs for the Estate are covered by the Education Service. Any release of the restrictive covenant is treated as a disposal and will be conducted in line with statutory processes set out in the Charities Act 2011 and any receipt ring-fenced and invested for the specific Charity.

The Cropwood trust is empowered to undertake disposals of land and property on the Estate subject to the appropriate investment of the capital receipt. The disposal will add to the Trust's reserves without changing the nature of the area. Disposals of parts of the estate have already been made in 1994, 1998 and 2017.

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

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

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

- 4.1 The main area of land comprising the Cropwood Estate was gifted to the City either jointly or separately by Barrow Cadbury and Mrs Geraldine S Cadbury in three main transfers dated 1<sup>st</sup> June 1921, 28<sup>th</sup> February 1933 and 20<sup>th</sup> May 1938 and is approximately 36.5 hectares. It was gifted principally for School's use and the majority of the land is designated to Hunters Hill Technology College (formerly Hunters Hill School). The gift also included the property known as Rosemary Cottage, a substantial detached house, which was disposed of on 26<sup>th</sup> February 1999 as it was no longer required for the fulfilment of the Trusts Objects.
- 4.2 The Trust is governed by a scheme dated 12<sup>th</sup> November 1997 which permits disposals and is registered Charity no. 1085296. The specific objects of the Cropwood Estate trust are wide ranging and are: the furtherance of any charitable purpose for the benefit of the inhabitants of the City of Birmingham including all or any of the following purposes (a) the provision and support of educational facilities (b) the provision and support of facilities for recreational and other leisure time occupation with the object of improving the conditions of life for the said inhabitants (c) the relief of the aged, impotent and poor (d) the relief of sickness.
- 4.3 On the disposal of Rosemary Cottage restrictive covenants were included to limit the land to a single private dwelling house with appropriate outbuildings only to prevent additional development. The current owners have sought and received planning permission for the conversion of the roof space above the detached garage to form a separate one bedroom residential unit. The owners have sought a partial release of the restrictive covenant to allow this and authority is requested to negotiate suitable terms for its release. Appropriate recompense will be due to the Cropwood Estate if the matter proceeds. It is proposed to negotiate those terms, take the additional value and allow the development. Any further development would still be subject to the continuing restrictive covenant and require a separate consent if be allowed.
- 4.4 **Aims and Objectives of the Trust**  
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the trust are simply to 'use of the premises as a public park and the activities likely to be allowed in the Lodge will comply.
- 4.5 **Trustee Powers**  
A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds as amended by a scheme agreed with the Charity Commission.
- 4.6 **Trust Finances**  
The Cropwood Estate Trust has a valid revenue source and options to convert assets from property to capital investments. The College is Local Authority managed and generally Education will cover any extraordinary costs created by the College land.
5. **Evaluation of alternative option:**  
To do nothing is in fact an option. Consent to the works does not have to be given in this instance but it is considered appropriate and proportionate to allow the proposed development to proceed.

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

- 6.1 To secure the best terms for any disposal while remaining in compliance with the Trust Objects.

**Signatures:**

Chief Officer(s): .....

Dated: .....

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

1. Charity Commission Scheme for the Cropwood Estate dated 12<sup>th</sup> November 1997
2. Disposal documentation for Rosemary Cottage dated 26<sup>th</sup> February 1999

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

1. Planning Consent for the Rosemary Cottage development

## PLANNING DECISION NOTICE

Mrs Carole Wright  
C/O Mrs Vanessa Greenhouse  
54 Doctors Hill  
Bournheath  
Bromsgrove  
B61 9JE



**Bromsgrove**  
District Council

[www.bromsgrove.gov.uk](http://www.bromsgrove.gov.uk)

### Approval of Planning Permission Subject to Conditions

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**APPLICATION REFERENCE:** 16/1138  
**LOCATION:** Rosemary Cottage , 26 St Catherines Road, Blackwell,  
Bromsgrove Worcestershire B60 1BN  
**PROPOSAL:** Conversion of garage into a separate dwelling  
**DECISION DATE:** 31st January 2017

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Bromsgrove District Council, as the Local Planning Authority, approves planning permission for the proposal described above. This permission is subject to conditions, which must be complied with and are set out below.

#### Conditions

- 1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004

- 2) The development hereby permitted shall be carried out in accordance with the Materials specified in Question 9 of the application form and the Approved Plans/ Drawings listed in this notice:

03 Proposed Site Plan

04 Proposed Floor Plans and Elevations

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A, B and E and Schedule 2, Part 2 Class A shall be carried out without the prior approval of the local planning authority to an application in that behalf.

Reason: To protect the visual amenity of the area and the openness of the Green Belt.

- 4) The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have been provided and these areas shall thereafter be retained and kept available for those users at all times.

REASON: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway.



Ruth Bamford  
Head of Planning and Regeneration

#### **Reasons for granting planning permission**

This proposal has been assessed against the following documents:

#### **Adopted Bromsgrove District Plan 2011-2030**

BDP1 Sustainable Development Principles  
BDP4 Green Belt  
BDP15 Rural Renaissance  
BDP19 High Quality Design

#### **Others:**

NPPF National Planning Policy Framework  
SPG1 Residential Design Guide

The proposal site is within the Green Belt as defined in BDP4 of the Bromsgrove District Plan (BDP) and therefore the construction of new buildings is to be regarded as inappropriate development. There are however a number of exceptions to this, as set out in paragraph 89 and 90 of the National Planning Policy Framework (NPPF) including the re-use of buildings provided that the buildings are of a permanent and substantial construction. The existing garage is brick built with a tile roof and is considered of substantial construction, therefore the re-use of the building is considered appropriate development by definition.

Whilst the applicants have indicated that the building will be occupied by a family member the garage is completely severed from the main dwelling with adequate facilities, amenity space and parking and is therefore considered as a separate planning unit in regards to this planning application. This does not change the stance of the Council in respects of paragraph 90 of the NPPF as previously stated above. Given the garage is within a residential garden and would not result in any additional built form on site, with the removal of permitted development rights the change of use would have no greater impact on openness and does not conflict with the purposes of including land in the Green Belt and is therefore considered to be in accordance with paragraph 90 of the NPPF.

For the reasons stated above the proposal is considered to be in accordance with the Development Plan. The comments from the Parish Council are noted, however ownership of the property are not under planning control and therefore a condition would not be considered reasonable in this instance. No objections have been received from the consultees or neighbours in respect of this application.

### **Informatives**

- 1) Proactive engagement by the local planning authority was not necessary in this case as the proposed development was considered acceptable as initially submitted.
- 2) The developer should be aware of the Department of Environment Circular 1/09 (part 7) which explains that the effect of development on public right of way is a material consideration in the determination of applications for planning permission and that the grant of planning consent does not entitle developers to obstruct a public right of way.
- 3) The applicant is advised, although the site is located within a low flood risk area, it would be in their interest to conduct a porosity test at the earliest possible stage, to ensure the viability of the soakaway.

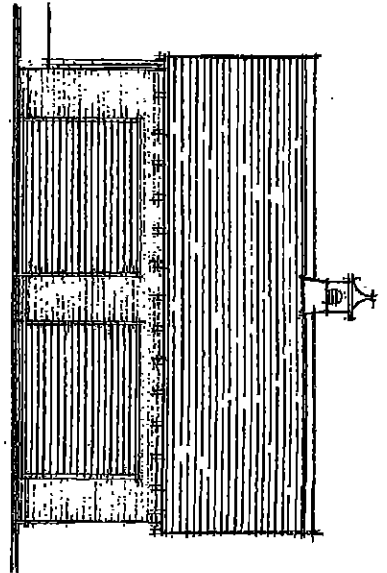
### **For your information**

#### **Appealing the planning conditions**

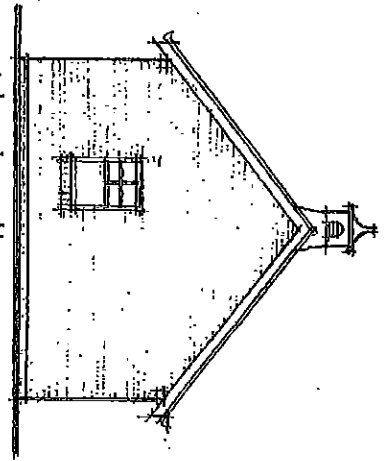
If you feel that the conditions are not acceptable you can appeal to the Secretary of State through the Planning Inspectorate. This appeal should be made by 1st August 2017 unless supported by special circumstances. The appropriate form and further information on how to appeal can be found at <http://www.planningportal.co.uk/planning/appeals/planningappeals> or by contacting the planning Inspectorate Customer Services Team on 0303 444 5000.

## **Purchase Notices**

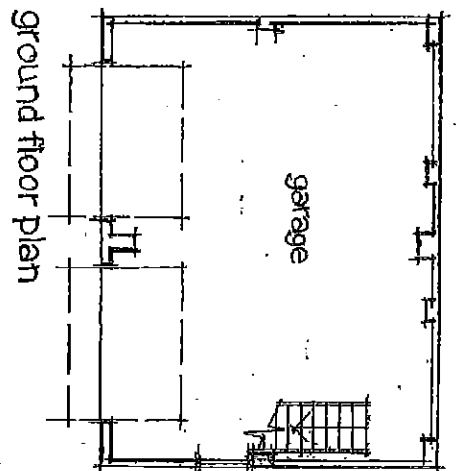
If Bromsgrove District Council or the Secretary of State has refused planning permission or granted it conditionally, the landowner may claim that the land is incapable of reasonable beneficial use, and for this reason may serve the District Council a purchase notice requiring them to purchase the land. In certain circumstances, a claim may be made against Bromsgrove District Council for compensation. Further information about purchase notices can be found at: <http://www.legislation.gov.uk/ukpga/1990/8/part/VI>



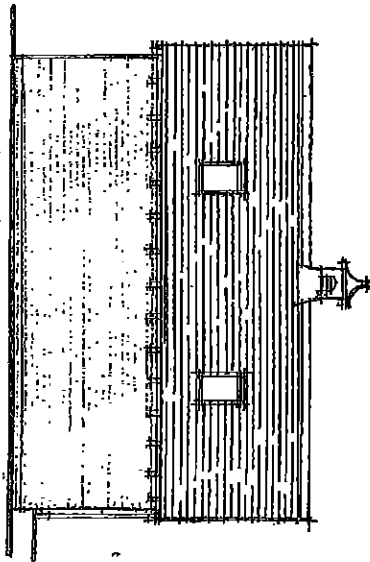
front elevation



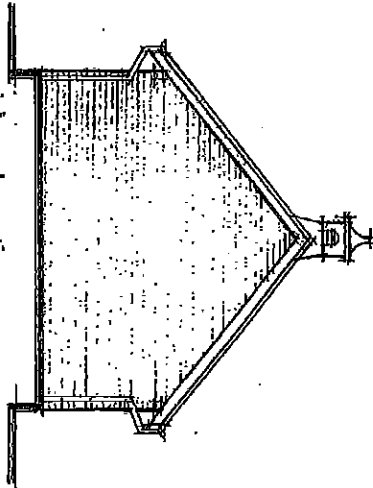
side elevation



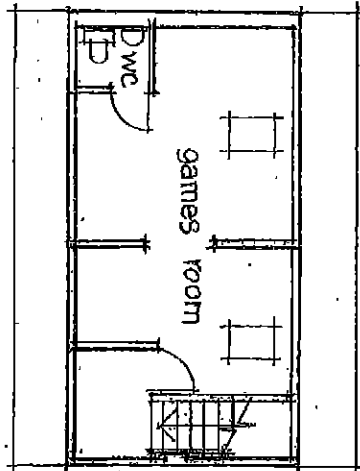
ground floor plan



rear elevation



side elevation



first floor plan

project:  
conversion of garage to annexe  
Rosemary Cottage  
26 St Catharines Road  
Blackwell

client:  
Mr & Mrs Wright

date:  
Nov 2016

dwg no:  
02

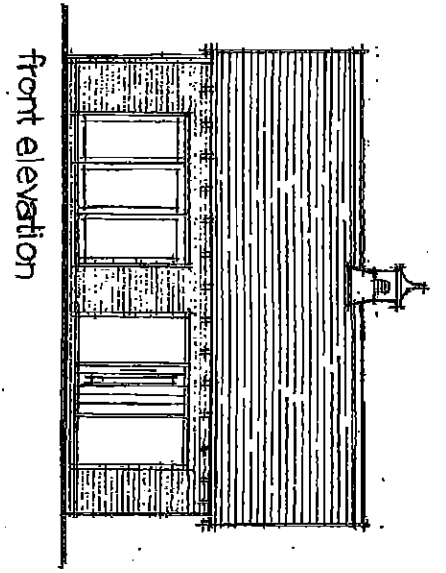
Vanessa Greenhouse RIBA

drawing:  
existing plans & elevations

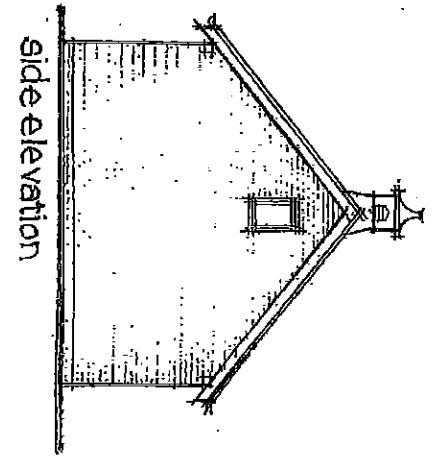
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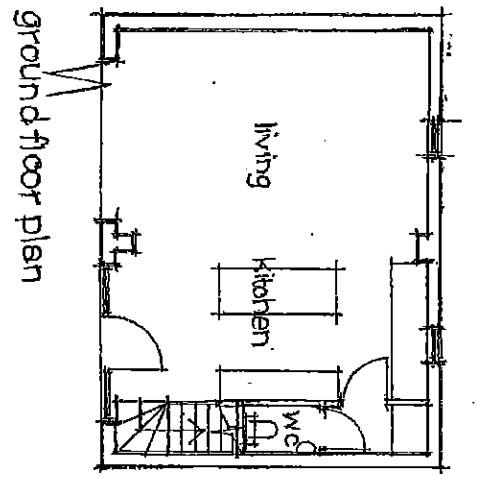
54 Doctors Hill  
Bourmhead  
Bromsgrove B61 9JE  
tel: 01527 578726



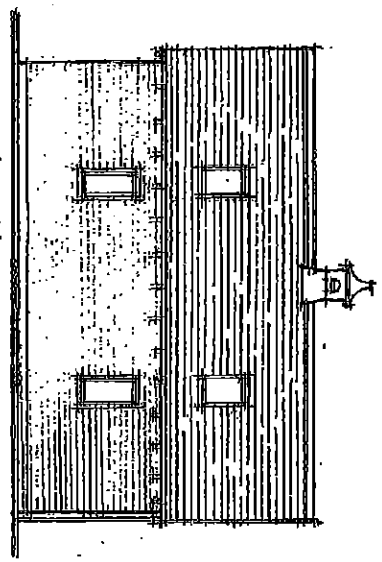
front elevation



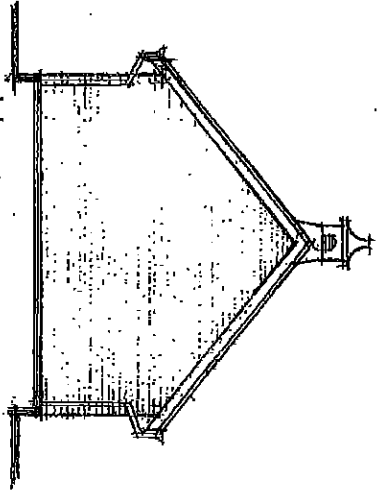
side elevation



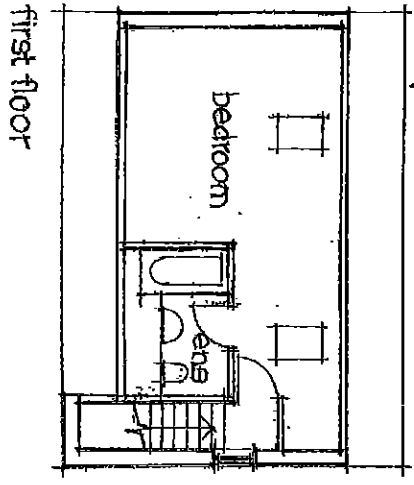
ground floor plan



rear elevation

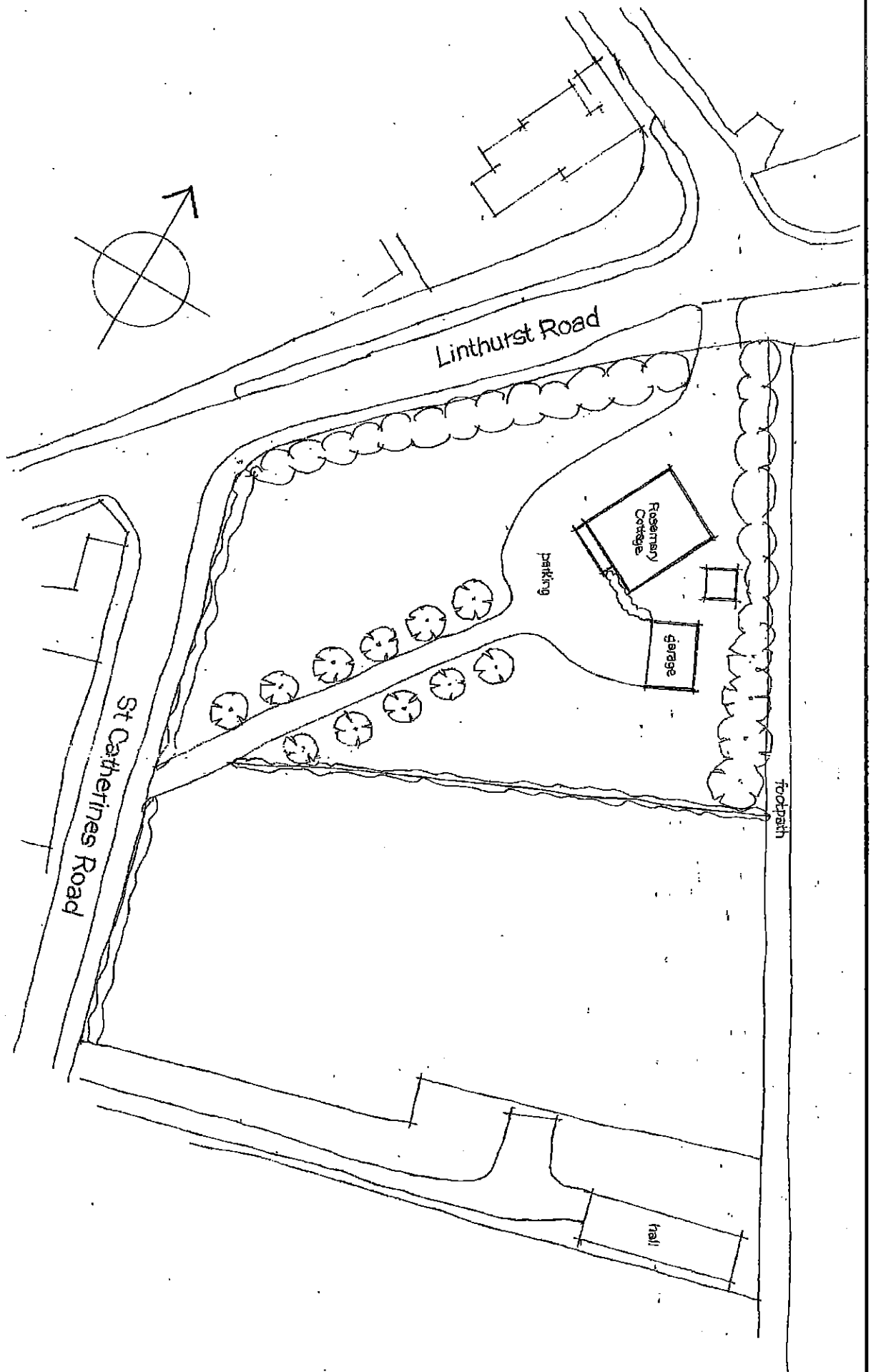


side elevation



first floor

<p>project: conversion of garage to annexe Rosemary Cottage 26 St Catherines Road Blackwell</p>	<p>client: Mr &amp; Mrs Wright</p> <p>drawing: proposed plans &amp; elevations</p>	<p>date: Nov 2016</p>	<p>drg no: 04</p>	<p>Vanessa Greenhouse RIBA 24 Doctors Hill Bournemouth Bromsgrove B61 5UE tel: 01527 578726</p>
<p>scale: 1:100</p>	<p>revision:</p>			



project:  
conversion of garage to annexe  
Rosemary Cottage  
26 St Catherines Road  
Blackwell

client:  
Mr & Mrs Wright

drawing:  
existing site plan

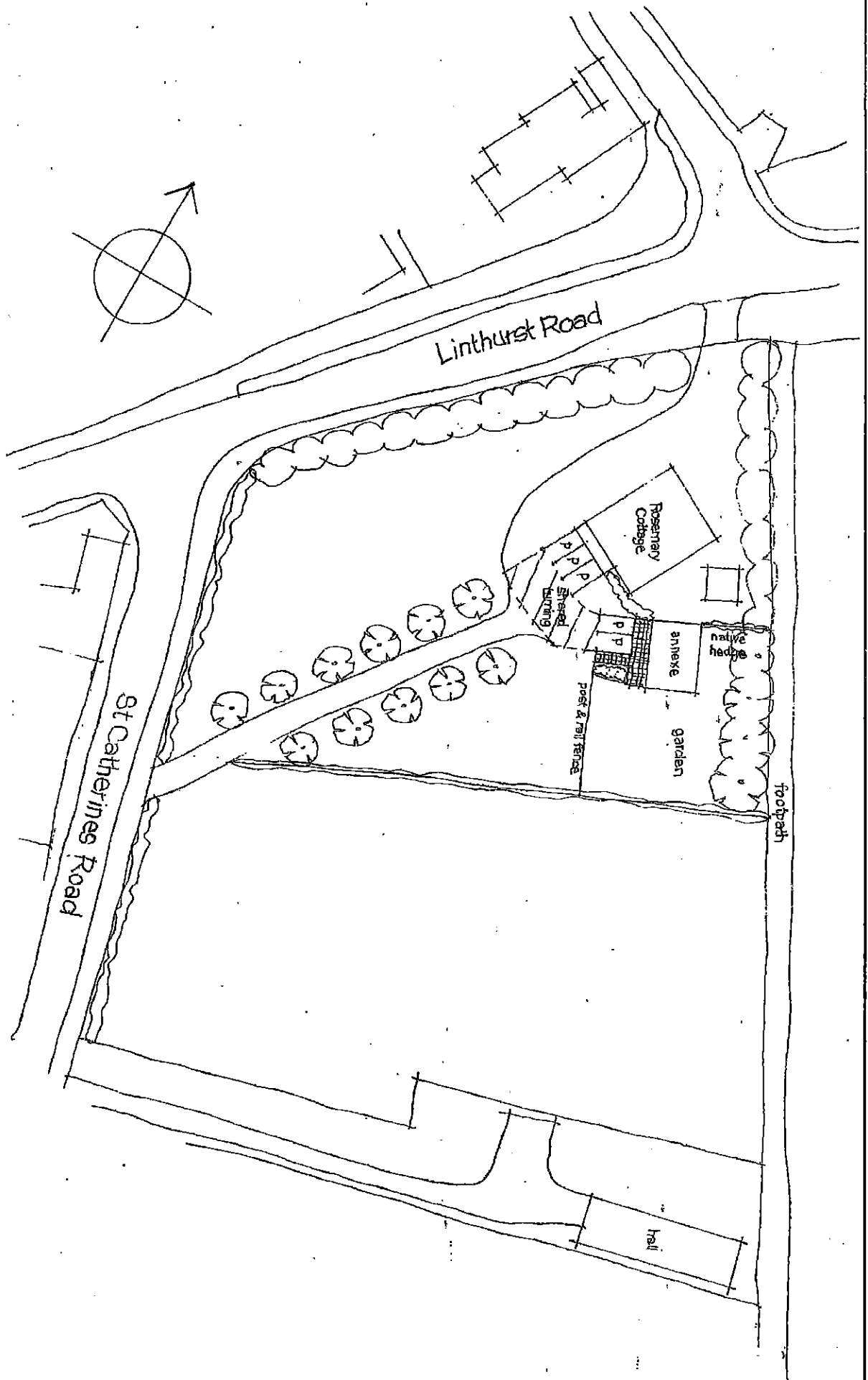
date:  
Nov 2016

scale:  
1:500

dwg no:  
01

revision:

Vanessa Greenhouse RIBA  
54 Doctors Hill  
Bournemouth  
Bournemouth B61 9JE  
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project  
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Mr & Mrs Wright  
drawing:  
proposed site plan

date:  
Nov 2016

dwg no:  
03

scale:  
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Bournemouth B61 9JE  
tel: 01527 578726

**BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE**

**PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>Assistant Director of Property (Interim)</b> <b>19<sup>th</sup> July 2017</b>
<b>SUBJECT:</b>	<b>CROPWOOD ESTATE – HUNTERS HILL TECHNICAL COLLEGE USE OF LAND</b>
<b>Wards affected:</b>	<b>Outside of the City Boundaries</b>

**1. Purpose of report:**

- 1.1 To seek instruction on the future uses of various parcels of land forming parts of the Cropwood Estate not currently used by the Hunters Hill Technical College

**2. Decisions recommended:**

That the Committee

- notes that parcels A, B, C and D in Appendix 1 are vacant and available to be let
- notes the College seek additional land to enhance the curriculum in terms of farm studies preferring use of parcels C and D
- and also the College request this land be let to them at a peppercorn rent (at less than best value)

and the Committee recommends that

- 2.1 the land identified as parcels C and D in Appendix 1 be let to the College on terms to be agreed
- 2.2 the remaining land is advertised as available to let marketed generally for agricultural use
- 2.3 the recommendation of the Trusts and Charities Committee to be advanced to the next available meeting of the Council as Trustee for approval
- 2.4 approval be given to negotiation and settlement of the terms of any disposal being delegated to the Director of Property who will work with external agents to secure appropriate valuation advice to comply with requirements of the Charities Act 2011
- 2.5 authorises the City Solicitor to negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

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

### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Officers in Education are willing to support the Colleges request. The land is outside of the City boundaries and no Member involvement beyond the Committee is required.

##### External

Public consultation is not required but may be undertaken.

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

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision making to the Trusts and Charities Committee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust document as amended by any Scheme approved by the Charity Commission.

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

The Trustees of the Charity could rely on the provisions of the Section 6(1) Trusts of Land and Appointment of Trustee Act 1996 which provides an implied statutory power of disposal. However, the Charity Commission Scheme dated 12<sup>th</sup> November 1997, establishing the regulation of the Charity also provides appropriate powers for the disposal of assets by sale or for lease. It requires that all such disposals be conducted in line with statutory processes set out in the Charities Acts and that the proceeds of any sale be invested in trust for the Charity. Lettings at less than best value are not permitted although other arrangements can be agreed with other charitable organisations subject to suitable authorisation.

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

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects of the trust and charity law. The Trustees must act with prudence and must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. All future running costs for the premises will be covered by any tenant or while the property remains vacant the Education Service. Any disposals will be conducted in line with statutory processes set out in the Charities Act 2011 and revenue ring-fenced and invested for the specific Charity. Any disposal, if approved, will be processed by the retained agricultural agents Bruton Knowles overseen by officers in Legal Services and Birmingham Property Services.

The Cropwood trust is empowered to undertake disposals of land and property on the Estate either freehold or leasehold subject to the appropriate investment of the capital receipt. Disposals of parts of the estate have already been made in 1994 1998 and 2017.

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

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

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

- 4.1 The main area of land comprising the Cropwood Estate was gifted to the City either jointly or separately by Barrow Cadbury and Mrs Geraldine S Cadbury in three main transfers dated 1<sup>st</sup> June 1921, 28<sup>th</sup> February 1933 and 20<sup>th</sup> May 1938 and is approximately 36.5 hectares. The trust is governed by a scheme dated 12<sup>th</sup> November 1997 and is registered Charity no. 1085296.
- 4.2 The Cropwood Estate has been used since the original gift for schools purposes. The Hunters Hill School now known as Hunters Hill Technology College have use of most of the land for schools purposes. The remainder of the land is either woodland or meadows with the meadows usually let on formal agricultural tenancies as originally intended in the Trust documents to provide an income to the Trust. Officers have brought to an end some temporary arrangements and the land is currently unlet.
- 4.3 The College which has 120 students aged between 11 and 16 who have been identified as having moderate learning, emotional and behavioural difficulties provides a curriculum which includes in addition to the core school subjects a range of practical skills classes such as bricklaying, motor vehicle maintenance and farm studies. Since the report to Committee dated 20<sup>th</sup> April 2016 allocating the premises known as 'The Stables' to the College it has been the base for the farm and has a range of animals from sheep, pigs, horses and a wide range of other caged smaller animals. The farm wishes to expand the number of animals and is seeking additional land to do so and this would be onto land formerly let on agricultural tenancies.
- 4.4 The objects of the charity are very wide ranging and therefore could be met by almost any means. While the school operation clearly demonstrates continuing adherence with the Objects of the Trust the letting on the land to create an income for the trust is also a traditional key component for the land ownership there.
- 4.6 **Aims and Objectives of the Trust**  
Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the Objects of the trust. The specific objects of the Cropwood Estate trust are wide ranging and are: the furtherance of any charitable purpose for the benefit of the inhabitants of the City of Birmingham including all or any of the following purposes (a) the provision and support of educational facilities (b) the provision and support of facilities for recreational and other leisure time occupation with the object of improving the conditions of life for the said inhabitants (c) the relief of the aged, impotent and poor (d) the relief of sickness.
- 4.7 **Trustee Powers**  
A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds as amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention of the documents however routes exist for their amendment through Part 7 Charities Act 2011 or an Order or Scheme from the Charity Commission.
- 4.8 **Trust Finances**  
The Cropwood Estate Trust has a valid revenue source and also has options to convert assets from property to capital investments. The original deeds set aside the meadows areas for independent agricultural tenancies to create a revenue source for the better management of the Trust. Lettings at less than best value will deplete income to the trust but use by the College is still a valid use in line with the Trust Objects. The College is Local Authority managed and generally Education will cover any extraordinary costs created by the College land.

**5. Evaluation of alternative option:**

To do nothing is not an appropriate option. The land should not sit idle and the only options should either be:

- let in the open market
- let to the College at market rent
- let to the College for nil or reduced rent

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

6.1 To better safeguard the Trust's assets while remaining in compliance with the trust Objects.

**Signatures:**

Chief Officer(s): .....

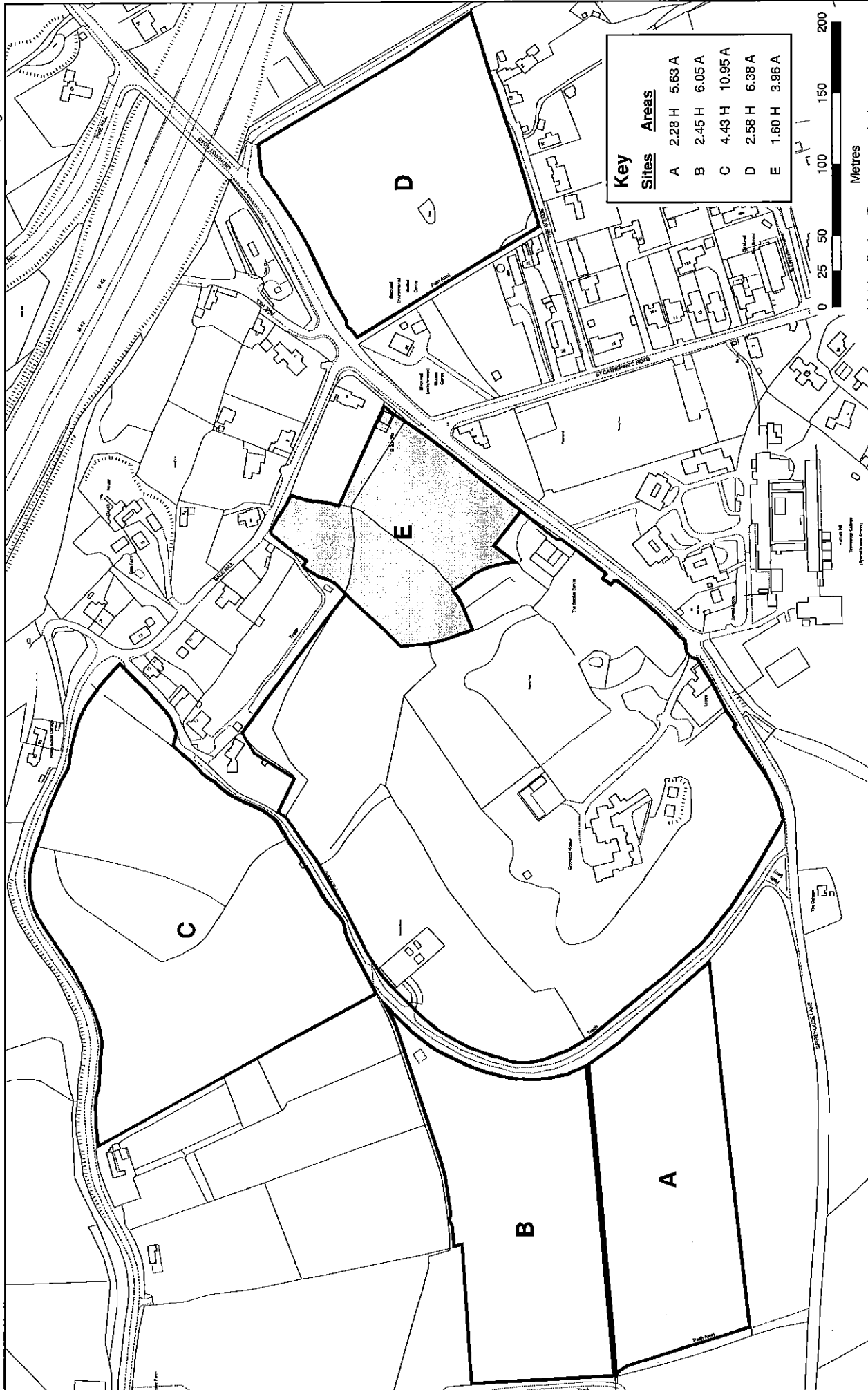
Dated: .....

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

1. Scheme dated 12<sup>th</sup> November 1997

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

1. Plan of the Estate available to let.



**Cropwood Estate Meadow Land**

**Birmingham City Council**

Scale: 1:2,500 @ A3

Drawn: Bharat Patel

Date: 11/07/2017

Waheed Nazir  
Corporate Director, Economy  
1 Lancaster Circus  
Birmingham, B2 2GL

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