

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

1. PURPOSE/SUMMARY

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 & Charities Committee meetings are recommended to proceed.

2. BACKGROUND

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 & 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 a Charity Commission Scheme where applicable. These documents set out the powers the Trustees have, 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 an implied power under the Trusts of Land and Appointment of Trustees Act 1996. In some cases trust deeds do not extend to a power of disposal and to effect this will require an application to the Charity Commission for the grant of a scheme of new management powers. The Commission would only provide an Order to the Council as Trustee, if the Trustee can clearly demonstrate that the decision proposed are in the best interests of the Trust and that it could demonstrate to the Commission that it has managed any potential conflicts of interest by undertaking proper public consultation on the proposal.

It is a requirement of the Charities Act 2011 that any charitable trust must achieve best value in any disposal of land, although there are some exceptions to this when dealing with other charities. Principally properties agreed for disposal will be sold at auction as the most suitable route to ensure no procurement requirements are compromised. All properties sold at auction will be subject to a suitable reserve being set.

3. MATTERS TO BE DETERMINED

A. Burbury Park – disposal of former park keeper’s lodge

Burbury Park was created from the gift from William Middlemore of 1.64 hectares of land on 1st December 1876. Additional areas of land have been acquired to expand the Park

but those are not held in trust. The lodge has been used for the accommodation for a park keeper since the original park was laid out. This is Charity no. 1076676 registered from 21st July 1999. On the retirement of the last employee the Parks Service has declared the lodge surplus to their requirements.

The specific objects of the trust are '*to improve the conditions of life for the inhabitants of the area of benefit without distinction of political, religious or other opinions by the provision and maintenance of a recreation ground and community centre*'. The assets of the Trust should be used to advance the objects of the charity. It is unlikely any suitable use consistent with the Objects of the trust can be found and therefore the recommendation is to dispose of the property. The park is treated as 'specie' land.

At its meeting of 21st September 2016 the Trust and Charities Committee acknowledged that the lodge was surplus 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 and at market value in order that the Trust is sufficiently compensated and that authorisation should be given to make all appropriate applications to obtain powers for the better management of the trust holdings including power of disposal by Charity Commission Scheme, and/or seek an Order from the Commission sanctioning the disposal of designated land. It also required that consideration also be given to the lodge being transferred to the Birmingham City Council Housing Directorate to determine if this was suitable to be let and managed as part of the municipal housing stock as this may be a better fit with the Objects of the trust. Any such transfer is still a disposal and will require the Burbury Park trust to seek the same powers from the Charity Commission as it would require to undertake a general disposal together with further specific authorisation to make a disposal to a "connected party"(Birmingham City Council) and therefore the two proposals can move forward at the same time. Appropriate restrictions will be included in the conveyance limiting the lodge to use as a single family residence. All receipts will be ring-fenced to 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 required.

B. Sparkhill Park – grant of cable wayleave providing electricity to the new Leisure Centre

The Park now approximately 8.2 hectares (20.25 acres) of land was gifted initially to the Rural District Council of Yardley by the Governors of Yardley Charities on 22nd March 1904 and on local authority amalgamations passed to the City Council. The terms of the gift simply provided that it be used by the inhabitants of the Parish of Yardley as recreation grounds. The park is treated as 'specie' land.

Sparkhill Baths erected in 1930 on trust land closed in 2008 due to structural issues and has been replaced by a full Leisure Centre with pool as part of the Leisure Framework approved at Cabinet in September 2011 and is due to open to the public in July 2017. The existing power cables run under Stratford Road but with a new updated supply required it is appropriate and in the public interest to consider a route for the new cable across the Park. A route causing minimal disruption to the park users or tree roots etc. has been agreed and that the installation be documented by a Wayleave Agreement under the Electricity Act 1989 with Western Power Distribution (West Midlands) plc. As a wayleave although a minor interest in land is still a disposal your formal approval is still required. Any income or receipt will be ring-fenced to the trust.

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

C. Elford Estate – grant of leases of public open space areas to Elford Parish Council

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 Deed of Gift dated 29 September 1936, requires that the estate should be used for “*the healthy recreation of the inhabitants of the City of Birmingham*”. Further s86(2) West Midlands Act 1980 requires that the City Council preserves, as far as is possible, the rural character of Elford Hall Estate.

The Elford Parish Council having confirmed a desire to have an increased role in the public open space areas of the trust land has agreed to enter into formal leases to manage the areas of land known as The Avenue and also The Picnic Area at their own expense removing the obligation on the trust to do so currently. The Elford Trust already has sufficient powers within its existing scheme date 14th May 1990 to grant such leases.

At its meeting of 1st March 2015 the Trust and Charities Committee acknowledged that the changeover of management responsibilities was suitable and agreed to recommend that the leases be granted on terms to be agreed, compliant with all requirements set out in the Charities Act 2011.

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

D. Elford Estate – disposal of land adjoining The Gardens

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 Deed of Gift dated 29 September 1936, requires that the estate should be used for “*the healthy recreation of the inhabitants of the City of Birmingham*”. Further s86(2) West Midlands Act 1980 requires that the City Council preserves, as far as is possible, the rural character of Elford Hall Estate.

The area of land to be disposed of measures approximately 0/9 acres (0.36 hectares) which is a very small part of the estate still comprising over 400 acres. The land has not been available to the public and has no development value. The Elford Trust already has sufficient powers within its existing scheme date 14th May 1990 to dispose of land if it is deemed suitable to do so.

At its meeting of 1st March 2017 the Trust and Charities Committee acknowledged that the proposal to dispose of the land was appropriate and agreed to recommend that the disposal progress on terms to be agreed, compliant with all requirements set out in the Charities Act 2011 and at market value.

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. Burbury Park – disposal of former park keepers lodge I

- 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

- E. that the Director of Property 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. Reports and Plans presented to Trusts & Charities Committee

Chairman of the Trusts and Charities Committee

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Councillor Habib UL Rehman