

**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. Highbury – Disposal of former lodge 98 Queensbridge Road**

The estate comprises approximately 13.03 hectares (32.2 acres) of park land including Highbury Hall and Chamberlain House and three lodges gifted by the heirs of the Right Honourable Joseph Chamberlain on 31<sup>st</sup> March 1932 and is held in trust as Registered Charity no 1039194.

Approval has already been given to grant a lease of the whole estate to the Chamberlain Highbury Trust (Registered Charity no 1169845) who will manage the estate in future and seek funds to refurbish Highbury.

The lodge having been vacated in 2016 is currently protected by a live-in guardian but is in very basic unimproved condition. At its meeting of 20<sup>th</sup> September 2017 the Trusts and Charities Committee acknowledged that officers having considered all other options to refurbish and re-use the lodge it is more appropriate to preserve all existing capital and accrued revenue in the Highbury Trust to maximise the matchfunding for the proposed HLF bids for Highbury and to dispose of the Lodge and its garden as shown on the plan in Appendix 1.

The trustees of the Chamberlain Highbury Trust also agree to the proposed disposal of the property and the reuse of the capital receipt as additional matchfunding.

The trust has the power to make disposals. Approved disposals have taken place previously. Any disposal would be required to be at the full market value of the asset as assessed by an independent qualified valuer. Any capital receipt will accrue to trust funds and interest would be used to further the Objects.

A disposal by sale is considered the most appropriate manner to maximise the benefit to the Estate.

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. Moseley Road Community Centre (Friends Institute), 220 Moseley Road**

The City Council has managed the property now known as Moseley Road Community Centre since the original gift on 25<sup>th</sup> March 1903 by Charles Alston Smith-Ryland, Thomas Frederick Chavasse and others. The property was further expanded on 12<sup>th</sup> April 1935 being acquired for nil value from Charles Watkins & another. The premises are held in trust as Registered Charity no. 516602. The premises are a large Victorian Grade 2 Listed building in need of substantial repairs.

There is considerable affection for the premises and a preference that community uses be retained and for some years there has been a desire to enable the property to be managed by others better positioned to seek external capital and revenue funding sufficient to revitalise the premises. A report to effect this was approved at Trusts and Charities Committee on 3<sup>rd</sup> July 2013 but not progressed for various reasons but its disposal is once again supported by the Committee. To do so will require the opportunity for others to manage the premises by the grant of a lease to be advertised and a selection process put in place to consider all applications received.

However, as neither the original conveyances nor the existing Scheme or its amendments provide the trust with appropriate powers to progress this it is necessary to seek from the Charity Commission a further Scheme or Order which will provide the trust with the powers required for the modern management of a trust and the mechanisms for disposal by sale or lease of part or the whole premises and also to enable change to or for the winding up of the charity, if that ever becomes appropriate.

To seek opportunities to better safeguard the premises it is now proposed that the applications to the Charity Commission be made and if new powers are granted that the premises be marketed with Expressions of Interest be sought from the third sector with a view to transferring management or ownership of the building. Other applications may be required to remove or amend the restrictive covenants placed on the conveyances or to widen the use of the premises to reflect current and proposed user groups.

If having fully tested the market it is not possible to secure a letting the retention of the Community Centre is not viable within current Birmingham city council budgets and it is likely that the premises will be sold.

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. Elford Estate – disposal of land adjoining Paget House

The Elford Estate Charity is formed from a single gift from Francis Paget in 1936 and is held in trust as Registered Charity no.1000692. The trust has existing powers to make disposals by sale or lease and approved disposals have taken place previously in the vicinity.

The proposal to dispose of a further part of the estate is appropriate as the area of land is difficult to manage. It is not accessed by the public and its disposal is not considered to be detrimental to the remainder of the Estate. It is unlikely the sale of the whole area identified will be agreed but it is in the best interest of the Trust to continually seek to limit the Trusts commitments on the physical estate to minimise the impact of management costs on the Trust's income and the undertaking of the objects of the trust. Any disposal would be required to be at full market value as assessed by an independent qualified valuer.

If disposal is judged to be in the best interests of the charity the preference is to sell the freehold interest as the property is detached from the remainder of the Estate now and while there is no likelihood of further development restrictive covenants can be included in the disposal to limit future uses and ensure appropriate safeguards are provided to the remaining land of the Trust. The disposal of this land creates a capital receipt to the Trust while the nature of the land remains unchanged and continues to support the Objects of the Charity.

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

## **MOTIONS**

That Full Council sitting as 'Council as Trustee':

A. Highbury – Disposal of former lodge 98 Queensbridge Road

- i) notes that the property is currently vacant and although safeguarded by a guardian occupation, is principally unimproved and in need of capital improvements but no longer required as residential accommodation by the Chamberlain Highbury Trust.
- ii) approves the proposal to negotiate a disposal of the freehold interest on terms to be agreed of the house and grounds set out in Appendix 1.

B. Moseley Road Community Centre (Friends Institute), 220 Moseley Road

- i) notes the report approved at Committee on 3<sup>rd</sup> July 2013 and the continuing desire to release the premises in the open market for community purposes or, if needs be, other uses and that this will ultimately require powers to enable the disposal of the premises by sale or by the grant of a formal lease or leases, but for which no existing power exists.
- ii) confirms that Expressions of Interest from the third sector with a view to transferring management or ownership of the building be sought in line with the terms approved by Committee on 3<sup>rd</sup> July 2013
- iii) authorises that separately applications be made to the Charity Commission to obtain a further revision to the existing Scheme for the better management of the trust assets including powers of disposal, winding up the Charity if appropriate and/or seeking to widen the charitable activities at the premises
- iv) authorises, if necessary, the making of applications including a Deed of Release from the giftor's family seeking to remove or amend the restrictive covenants limiting the use of the premises that might hinder disposal or future use
- v) authorises the disposal of the premises by way of a sale or by a lease, for up to 35 years from an early date to be agreed, to an appropriate organisation or persons to be determined via the proposed marketing and selection procedures

C. Elford Estate – disposal of land adjoining Paget House

- i) notes that land identified on the plan in Appendix 1 is land not accessible to the general public and provides no community function for the Elford trust nor provides any opportunity for further development
- ii) approves the proposal to negotiate a disposal of the freehold interest on terms to be agreed of portions of this land to the owner of the adjoining Paget House.

and

that the Assistant Director of Property (Interim) be authorised to secure appropriate valuation and marketing advice in line with statutory requirements of the Charities Act 2011 for the disposal of property and to negotiate and agree the terms of all agreements on behalf of the Trusts provided that appropriate restrictions are included in the disposal terms to properly safeguard the individual Trust

and

that the City Solicitor and Monitoring Officer 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, manage any appropriate consultation stages and to appraise the Trusts and Charities Committee of the results of that consultation.

## **Appendix**

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

Chairman of the Trusts and Charities Committee

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Councillor Habib UL Rehman