

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of: Date of Decision:	Director of Property 20th September 2017
SUBJECT:	ELFORD ESTATE – DISPOSAL OF LAND ADJOINING PAGET HOUSE
Wards affected:	Outside of the City Boundaries

1. Purpose of report:

- 1.1 To seek approval to dispose of land forming part of the Elford Estate.

2. Decisions recommended:

That the Committee

- 2.1 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
- 2.2 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.
- 2.2 approve the terms of any disposal being negotiated and agreed by the Director of Property acting as agent on behalf of the Trust provided that appropriate restrictions are included in the disposal terms to properly safeguard the Trust.
- 2.3 authorises the recommendations of the Trusts and Charities Committee be advanced to a future meeting of the Council as Trustee for approval the report to which will be approved by this Committee first.
- 2.4 authorises the Acting City Solicitor and Monitoring Officer to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation.
- 2.5 authorises the Acting City Solicitor and Monitoring Officer to make any further applications necessary for appropriate powers or approvals from the Charity Commission or other party or body as appropriate to agree to the disposal and to then prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above decisions.

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3. Compliance:

3.1 Consultations:

No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the Charities Act 2011. The Elford Estate is outside of the City boundaries and falls within the parishes of Elford and Whittington & Fisherwick and the secretaries of the Parish Councils are informed of works which affect the public areas of the estate.

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 charity's Trust document as amended by any Scheme approved by the Charity Commission.

The Elford Estate Trust holds the freehold interest of the land in trust as Sole Trustee. Actions proposed are required to be in the best interests of the trust and are intended to preserve the trust estate for the future. 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 Elford Estate Charity Commission Scheme dated 14th May 1990 establishing the regulation of the Charity also provides appropriate powers for the disposal of assets by sale or for lease without further approval by the Charity Commission provided such disposals are 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 Elford Estate.

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 and purposes of the trust and charity law. Any disposal of the land, if approved, will be undertaken by officers in Legal Services and Birmingham Property Services. The valuation of the asset will have to be undertaken by an external valuer as required under the Charities Act 2011 and the fee for this will be reclaimed from any capital receipt. Bruton Knowles are appointed to assist the management of the Estate and have provided valuation advice.

The land is isolated behind the original boundary wall of Elford Hall and has never been open to public access. It is a mix of woodland and grassed areas. It currently produces neither rent nor costs and has no development value or alternative use other than as additional garden to the adjoining houses. The removal of this land from estate ownership is not detrimental to the estate but removes an area of land not easily managed or safeguarded.

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

N/A. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions. However, no decision is made until the 'Council as Trustee' has determined it is expedient in the interests of the charity to act.

4.	Relevant background/chronology of key events:
4.1	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 registered 25 October 1990. The Elford Estate Charity Commission Scheme dated 14 th May 1990 permits disposals by sale or lease. Approved sales have taken place previously in the vicinity.
4.2	The proposal to dispose of part is appropriate as the area of land is identified as difficult and expensive to manage and it is appropriate to limit the Trusts commitments there. The objects of the charity as set out in paragraph 4.6 are wide ranging but the inaccessibility of this particular area and the maturity of the woodland there has always meant it is not used by the public and a proposal to dispose would enable the property to continue to be open garden land and still satisfy the Object of preserving the rural nature of the estate. Any disposal would be required to be at the full market value of the asset as assessed by an independent qualified valuer though disposal value is tempered by the cost of future management by the purchaser. Any capital receipt will accrue to trust funds and interest would be used to further the Objects.
4.3	In 2016 the former owner of Paget House sought to establish ownership over a portion of this land by seeking a first registration at the Land Registry which was opposed and defeated. The new owner of Paget house has requested to purchase parts of this land.
4.4	In considering the request for a disposal of the land due consideration must be given to the future management of the estate as a whole. The land has no independent access being positioned behind a Grade 2 Listed wall that formerly bounded the Elford Hall. The Hall was demolished in the mid 1960's and areas of land there disposed of in plots in 1980. Investigation with the local planning authority confirms there is no further development opportunity and therefore the disposal of the land appears not to be detrimental to the Estate.
4.5	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. It is unlikely the sale of the whole area will be agreed but it is in the best interest of the trust to remove as many management obligations as possible in this location.
4.6	Aims and Objectives of the Charity Each charitable asset is held as a separate trust and decisions need to be in the best interests of that trust. The objects of the Elford Estate Charity are 'the promotion of the healthy recreation of the inhabitants of the City of Birmingham' and 'the preservation of the rural nature of the estate'. The 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.
4.7	Trustee Powers The charity's constitution is set out within the executed Trust Deed, principally the acquisition deeds or as amended by any Scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the governing documents however subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers exist for the Trustees to make decisions on the future of the assets.
4.8	Charity Finances Formal accounts are required to be prepared for the Charity Commission returns where appropriate. The Trust has a strong revenue stream principally from the letting of the main agricultural land holding comprised in Home Farm plus other smaller lettings.
5.	Evaluation of alternative option:
5.1	To do nothing is of course a possible option and the Trust would continue to manage the land. However it is appropriate that land not capable of being safely available to the public should be considered for disposal by sale or by lease. A disposal by sale is considered the most appropriate manner to maximise the benefit to the Estate and restrictive covenants can be included in the disposal to ensure appropriate safeguards are provided to the remaining land of the Trust.

6. Reasons for Decision(s):

- 6.1 To secure legitimate occupation of land while also ensuring on-going compliance with and the Objects and purposes of the Charity for the future.

Date

Signatures

Chairman of the Trusts & Charities Committee

Chief Officer
Director of Property

List of Background Documents used to compile this Report:

1. Charity Commission Scheme dated 14 May 1990.

List of Appendices accompanying this Report (if any):

1. Plan of the trust ownership adjoining Paget House.