

Birmingham City Council

Report to Trust and Charities Committee

30 September 2024



Title:	HIGHBURY TRUST - AN UPDATE ON THE TRUST
Lead Cabinet Portfolio:	Councillor Phil Davis, Chair of Trust and Charities Committee
Relevant Overview and Scrutiny Committee:	N/A
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Authorised by:	Marie Rosenthal, Interim Monitoring Officer & City Solicitor, Finance and Governance
Is this a Key Decision?	No
If this is a Key Decision, is this decision listed on the Forward Plan?	No
Reason(s) why not included on the Forward Plan:	No
Is this a Late Report?	No
Reason(s) why Late:	No
Is this decision eligible for 'call in?'	No
If not eligible, please provide reason(s):	N/A
Wards:	Moseley

Does this report contain exempt or confidential information?

No

Has this decision been included on the Notification of Intention to consider Matters in Private?

No

Reasons why not included on the Notification:

N/A

1 EXECUTIVE SUMMARY

- 1.1 To update Trust and Charities Committee on the position of Highbury Trust and for the Committee to consider its position on the future of the Highbury Estate.

2 COMMISSIONERS' REVIEW

- 2.1 It is clear that the Council did not fully appreciate the differences between the local authority role and the Corporate Trustee role in the past and failed to act to ensure that this was fully understood and the position regularised. It is therefore essential that the necessary consents are obtained and the financial arrangements put in place to achieve clear separation of the Charity funds from the local authority. This will enable the Committee to take the decisions that are appropriate as trustees.

The officer group will equally need to understand when it is working for the Trustees and when it is working as the local authority. A Senior Responsible Officer should be appointed to guarantee this.

On this basis the recommendations are supported.

3 RECOMMENDATIONS

That the Committee:

- (i) Notes the decisions take by Full Council sitting as sole corporate Trustee of Highbury Trust on 11th July 2023 in relation to the disposal of property owned by Highbury Trust (including obtaining all required consents from the Charity Commission);
- (ii) notes the update in relation to action taken by officers in relation to the 11th July 2023 decision;
- (iii) seeks, as a priority, the regularisation of any required Charity Commission consents to facilitate ancillary property disposals to benefit the Highbury Trust and the submission of the Highbury Trust accounts
- (iv) confirms its support for work being undertaken to restore and safeguard Highbury Hall and Estate and the Trusts' continued working with the independent Chamberlain Highbury Trust;
- (v) notes the Council's approach to match-funding of the National Heritage Lottery Fund (NHLF) grant, the City Council's advice that match funding is no longer available and the current requirement to use Trust funds as an alternative;
- (vi) supports officers efforts to maintain continued occupation and use of Highbury Hall and gardens for public and other events, including its use

as a catered events venue generating resource to support Highbury Trust, as per option 4.3 below;

- (vii) supports efforts by the Chamberlain Highbury Trust to restore the estate grounds/gardens and agrees in principle to contribute, if required, up to £15,000 from Highbury Trust funds to such a National Heritage Lottery Fund (NHLF) supported scheme (per option 4.3 below);
- (viii) confirms the use of Trust funds to provide security or other presence in the building whilst unoccupied;
- (ix) seeks, as a matter of priority, payment from the Council to the Highbury Trust of the property receipt owing from the transfer of Chamberlain House to the Council for use by Uffculme School.
- (x) approves the creation of an Officer Task Group, convened via the Chair in consultation with the City Solicitor, Director of Finance and Director of Place, Prosperity and Sustainability, to monitor progress on all the above recommendations in between meetings of the Committee

KEY INFORMATION

Context

3.1 History, Governance and Support

Highbury Trust comprises land and property covering 12.66 hectares situated in the Moseley Ward, including the Grade 2 Star listed Highbury Hall and gardens (listed separately Grade 2). Built in 1879 by Joseph Chamberlain MP. Highbury Hall and gardens are on the Historic England 'at risk' list. Described as possessing an "interior of great richness" (Historic England), listing underlines the Hall and gardens' special architectural and historic interest, protected by law. The property and estate was gifted, in trust, to the Council in 1932.

By the 21st century while various Council corporate usages had largely protected the core of Highbury Hall, other parts of the building were unused and in a poor state. Community concerns led to complaints to the Charity Commission which prompted the Council to create the Trusts and Charities Committee, to better perform its trustee responsibilities over properties and other resources gifted in trust to the City Council.

The Committee commissioned a conservation and management review of the Highbury Estate from Birmingham Conservation Trust. In 2015, with the support of the Committee, this led to the creation of the independent Chamberlain Highbury Trust. (CHT), a volunteer body tasked with closer oversight of Highbury Hall and gardens on behalf of the Council -as-Trustee. CHT was asked to develop a plan for the site which could win National Heritage Lottery funding (NHLF) to fully repair and restore the Hall, based upon a business model creating a

sustainable income while retaining public and community access. CHT also took on raising resource for the restoration of the estate gardens.

In 2018 the then Leader of the Council, Cllr Ian Ward, and the Executive Director for regeneration, confirmed support in principle for match funding a successful NHLF bid. The Council subsequently confirmed this commitment. Repairs to the roof were also carried out. Part of the subsequent NHLF bid involved the sale of non-core property on the estate. It also involved use of the capital receipt owed to the Highbury Trust by the City Council for the transfer of Chamberlain House to the Education Department for use as Uffculme School.

On the 11th July 2023 a report was taken to Full Council sitting as sole corporate Trustee to agree the disposal of property owned by Highbury Trust. A number of recommendations were agreed at the meeting and work started to obtain the necessary Charity Commission consents and to transfer the land.

Since July 2023 a number of actions have been undertaken in relation to the properties owned by the Trust, in connection with seeking NHLF support for CHT's plan to restore Highbury Hall.

Highbury Hall

Highbury Hall is currently occupied by the City Council, through Civic Catering, as a conference/banqueting and wedding venue. This occupation has safeguarded the property and provided income for Highbury Trust.

The historic use of Highbury Hall as a conference/banqueting and wedding venue by the Council (rather than an independent provider answerable to Highbury Trust), has been seen as problematic by the Charity Commission as the activity is not charitable, although it does generate income for the maintenance for Highbury Trust.

Civic Catering will cease trading from Highbury Hall on the 30th September 2024 and will retain a minimal presence in the building. The final exit date is still to be agreed. The decision to vacate the premises originally arose from the planned start date for refurbishment works under the £11 million NHLF supported project to restore the Hall and gardens. A review of Civic Catering as part of Acivico - unrelated to the Lottery project - has since taken place. This has impacted Civic Catering's ability to continue current operations in all areas. While Civic Catering now has no pipeline of events arranged at Highbury, the market for such events is believed to still exist.

Chamberlain House

Chamberlain House is currently occupied by Uffculme Special Educational Needs School whose main school building is located next door to Chamberlain House. The use and maintenance of Chamberlain House as a Special Educational Needs

School, whilst maintaining this trust asset, is outside the charitable objects of Highbury Trust and therefore needs addressing with the approval of the Charity Commission.

The disposal of Chamberlain House is considered a connected person transfer, in that the Council as Trustee is proposing to transfer ownership to the Council as Local Authority, and the trust property to be transferred will not be replaced. Therefore, a Scheme or Order of the Charity Commission will be required to permit this. Before agreeing to the disposal, the Charity Commission will require sight of an independent arms-length valuation of the property which has been procured. All net proceeds of sale will initially revert to Highbury Trust and thereafter be applied in accordance with the direction of the Charity Commission.

Other Properties

There are several other properties on the site which are also subject to disposal discussions.

98 Queensbridge Road is currently unoccupied and is to be sold at a current market valuation and the proceeds of sale returned to Highbury Trust.

92 Queensbridge Road is currently used by the Four Seasons Gardeners Group and managed by Birmingham City Council's Adult Service Care directorate; this occupation will continue and be formally documented.

The Gatehouse Lodge situated at the entrance to Highbury Park is currently occupied by an ex-service employee; the longer term proposal for the estate are to retain the Lodge and let it subject to market terms to generate income for the Trust.

Work following 11th July 2023 Meeting

Since the meeting of the 11th July 2023, external solicitors have been instructed to provide necessary advice to the Trust in relation to charity, construction, commercial and property law matters.

Charity Commission consents

The Highbury Trust is currently in discussion with the Charity Commission in relation to all necessary consents to dispose of property as set out above. Further, the Highbury Trust is in the process of auditing its statutory accounts for filing having fallen behind on this process in previous years. It is anticipated that audited accounts for 2020/21 will be submitted to the Committee shortly for approval before filing with the Charity Commission and that the 2021/22 and 2022/23 accounts will follow shortly afterwards.

Restoration of Highbury Hall and Estate and National Lottery Funding

The Highbury Trust has been committed to the restoration of Highbury Hall and the remaining estate. Whilst looking to dispose of some parts of the estate, the Trust has been working with CHT with a view to taking a long term lease of Highbury Hall to maximise charitable activity at the site and to leverage funding from third parties to fund the maintenance and upkeep of this listed building.

A development grant of £5.076m has been secured from the NHLF and £1.175m from Salix Finance along with a number of smaller grant offers (Historic England etc) was secured to support the restoration project and CHT has been working on the production of a Development Plan to support this.

One of the requirements of the NHLF was for the Trust to provide match funding. In April 2023 the Council agreed to provide £3.3m of match funding to support the restoration project comprising of £1m from the Community Infrastructure Levy and £2.3m from the general fund.

Recent discussion with the Council has identified that the match funding is no longer available given the financial difficulties faced by the local authority.

The withdrawal of this match funding has resulted in the withdrawal of some grant funding (including the funds from Salix Finance) and has prevented CHT from accessing other grant funding programmes where match funding is a requirement. This has made it difficult to progress the restoration of Highbury Hall and also led to uncertainty over the NHLF money. However, the Trust may be able to use Trust funds as match funding should such money be available.

The Committee is asked to note the position of the Council in relation to the match funding and its inability to provide such funding through its own funds.

The Committee is also asked to confirm its continued intention to restore and safeguard the future of Highbury Hall and Estate through close working with Chamberlain Highbury Trust and the use of NHLF or other available funding to achieve this.

Preservation of Trust Assets

As set out in paragraph 3.5, Civic Catering will cease to trade from Highbury Hall on the 30th September 2024 leaving the property largely unoccupied. There is concern that Highbury Hall may fall into further disrepair due to it being left unoccupied as well as there being security concerns.

The Committee is being asked to support efforts of the Trust in maintaining continued occupation of Highbury Hall in the short term and agree to the use of Trust funds to ensure occupation is maintained (e.g. by the appointment of a caretaker) or security measures can be put in place to maintain the premise following the departure of Civic Catering. The Committee are asked to support

efforts to maintain the use of Highbury Hall for the use of the public and functions/events.

Outstanding Payment for Chamberlain House

In 2015/16 Chamberlain House was utilised by the neighbouring Uffculme School as an additional educational building. It was agreed that the building would transfer to the City Council, as Local Education Authority, for the continued use by Uffculme School.

At the time that Uffculme School took over occupation of Chamberlain House, the value of the property was ringfenced by the Council for transfer of the site. At that time, the transfer did not take place (although occupation did occur) and the necessary consents from the Charity Commission were not obtained.

The Trust must now seek a new valuation of the premises for the purposes of obtaining Charity Commission consent. However, the Committee is asked to agree that payment should then be sought from the Council for the cost of Chamberlain House in accordance with the valuation received.

Proposal and Reasons for Recommendations

- 3.2 To do nothing is not an option if the Council is to meet its obligations as owner and trustee. Highbury Hall and Estate requires significant work to restore it to its former state. There are insufficient funds in Highbury Trust to do the work. If the NHLF grant of £5million is withdrawn, neither the Council nor Highbury Trust nor CHT can afford to restore the Highbury Estate and other funding will still be required to maintain it.

Completing the restoration project is a difficult option so long as the Council continue to refuse its matched funding grant of £3.35 million and the promised Council underwrite of £2 million. The Council's decision also restricts CHT's ability to raise other funds for the project.

Another option is to develop an interim plan to address maintenance, fundraising and support for the Highbury Estate and to protect its public and community use, working with CHT. Continued occupation of Highbury Hall, with a catering service for weddings/events, would continue to generate income to maintain the property, protect it from vandalism and avoid heavy security costs. With the Hall and Estate still in use NHLF may agree a partial commencement of the lottery project works funded by the NHLF delivery grant. This would involve works in the grounds/gardens but not in the Hall. CHT has the capacity to match fund a garden project. The Committee/Council will need to give its agreement as one of the joint applicants for the original project's NHLF delivery grant and as owner. A limited contribution of c.£15,000 may be required from Highbury Trust towards works in the estate grounds. This set of proposals appears the most realistic and financially sustainable.

Parts of the Estate are now deemed surplus to requirement and the income obtained from the disposal of such buildings could be used to support the

restoration of the main Hall. With Civic Catering vacating the premises Highbury Hall will be left empty and therefore failure to undertake restoration work will see the Hall and Estate risk falling into ruin.

Work could be undertaken to restore the wider Estate (with no disposals) however this would require a significant amount of money which is not available to the Highbury Trust and would still require the occupation of the properties to be rectified with the Charity Commission to avoid further criticism or action by the Charity Commission. This option would not be viable given the money required and the current lack of match funding available to support any Heritage Funding which may be obtained.

4 IMPACT AND IMPLICATIONS

Finance

- 4.1 The financial implications to the Trust of the recommendations set out in this report are limited to the costs of legal advice to support the development of legal agreements to support the various property transactions set out in Section 3 of the report that form a part of the overall Highbury restoration project, together with any fees required to be paid to the Charities Commission pursuant to the required Consent Order for the disposal of Trust assets. These costs are not anticipated to exceed £40,000 (exclusive) and can be met from within the existing approved budget for the project (including funding held by the Highbury Trust).

In the event that the overall project receives all necessary approvals and funding (including from the Charities Commission, National Lottery Heritage Fund and BCC), a number of further property transactions relating to assets held by the Trust will be required to be undertaken, with all disposal proceeds anticipated to accrue to the Highbury Trust but be directed as required to the delivery of the project. These transactions will be the subject of a subsequent report that will set out the financial implications of these transactions in full.

Legal

- 4.2 Generally, a disposal of charitable land can only occur where the Trustees have either an express power of disposal within the Deed 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"). As the proposed disposal of property held in the Highbury Trust is to a connected party, in most cases set out above – the local authority, the Council as Sole Trustee will need a Charity Commission Order to permit this.

The Charity Commission will only consent to any disposals if they consider the proposal expedient and in the best interests of the Trust. The proposed disposal of property to the Council will deal with surplus assets of the Highbury Trust and generate a capital receipt that can be used to maintain the long-term future of the estate.

Regularising the current occupation of the site, or the future disposal as proposed, is important to ensure that the Trust is legally compliant in its actions.

Equalities

- 4.3 Public consultation about the proposed transfer of Highbury Trust assets, as set out in this report, was undertaken via the Council's BeHeard platform between February 2022 and April 2022. The responses received were supportive of the proposal subject to sufficient safeguards being in place to regulate the new occupier of the site. As previously reported it is anticipated that the Charity Commission will mandate that a further comprehensive public consultation exercise to be undertaken before they will consider granting a Scheme or Order for the proposal disposals to take place. At the same time a Full Equality Analysis will be undertaken to ensure that the requirements of the Equality Act 2010 are met.

5 APPENDICES

- 5.1 None

6 BACKGROUND PAPERS

- 6.1 None