

8 December 2021		ITEM: 5
General Services Committee		
Decision as Charity Trustees of Orsett Recreation Ground		
Wards and communities affected: Orsett	Key Decision: N/A	
Report of: Sean Clark, Corporate Director of Resources and Place Delivery		
Accountable Strategic Lead: David Johnson, Acting Corporate Property Manager		
Accountable Director: Sean Clark, Corporate Director of Resources and Place Delivery		
This report is Public		

Executive Summary

This report requests the General Services Committee acting for the Council in its capacity as trustee of the Orsett Recreation Ground, School Lane, Orsett to consider and agree in principle, if it is in the best interests of Orsett Recreation Ground charitable trust to grant a lease for 30 years of the Pavilion Orsett Recreation Ground to Orsett Cricket Ground. If it is considered to be in the best interest of the charitable trust, authorisation is sought to obtain written advice from a qualified surveyor in line with charity law for the lease of the Pavilion, Orsett Recreation Ground and negotiate the terms of the lease.

1. Recommendations:

1.1 Agrees to the decision in principle that, having considered the content of this report, if this is in the best interests of the charitable trust, that a grant of a lease for 30 years of the Pavilion Orsett Recreation Ground should be granted to Orsett Cricket Club where this is the case.

1.2 Delegates to the Assistant Director of Property authority to obtain written advice, including securing appropriate valuation and marketing advice from a qualified surveyor in line with statutory requirements of the Charities Act 2011 for the lease of the Pavilion, Orsett Recreation Ground and negotiate the terms of the lease.

1.3 The Director of Resources and Place Delivery, in consultation with the Chair of General Services Committee, agree final lease arrangements following consideration of the qualified surveyors report in line with statutory requirements of the Charities Act 2011.

1.4 that in the event that the lease arrangements are approved the committee delegates authority to:

- (i) AD Law & Governance to prepare and complete all the necessary legal documentation in accordance with the agreed terms and Charity Commission requirements to conclude the lease;**
- (ii) AD Law & Governance to contact the Charity Commission and take such steps and enter into such documents if required by the Charity Commission in order to give its consent to the lease; and**
- (iii) AD Property to give public notice in accordance with Section 121 Charities Act 2011, in the local press to notify people within the beneficial area of the charity that the Charity Trustees intend to dispose of the leasehold interest in the Orsett Recreation Ground .**

2. Introduction and Background

- 2.1 Most property and assets are owned by the Council, and all decisions related to the Council's corporate property are made by Cabinet Members or by officers under the officer delegated authorities. However the Council does hold some property and assets on trust which were given to the Council to hold on trust for a particular purpose. Where that purpose is a charitable purpose, transactions relating to property and land held on trust are subject to the requirements of the Charities Act 2011, and the Charities Commission. Guidance from the Charity Commission and Local Government Association on the council's role as charity trustee is attached at Appendix 1
- 2.2 The role of the Council as sole trustee of property and assets falls with the remit of General Services Committee. All decision making concerning matters related to property or assets held by the Council on trust need to be made by General Services Committee acting as Trustee with full regard of their trustee obligations.
- 2.3 Orsett Recreation Ground was conveyed to the Council's predecessor, Thurrock Urban District Council (UDC), nine acres in total, by separate conveyances both dated 31 December 1937 and it has been recently understood by the Council that it is held on trust by the Council for charitable purposes. The charity was created by way of a conveyance of part of the Recreation Ground dated 16 December 1899 and a later conveyance of the remainder of the Recreation Ground dated 17 January 1936. The Council

became the sole charity trustee when the Recreation Ground was transferred to the Council on 31 December 1937.

- 2.4 Under the governing documents of the trust (the 1899 and 1936 conveyances), the charitable objects are the use as an ornamental garden and place of recreation for the Inhabitants of and Visitors to the Parish of Orsett and the neighbourhood.
- 2.5 The governing document also provides that buildings may be erected and maintained by the Trustees for an Entrance Lodge or Entrance Lodges for the residence of some person or persons connected for the time being with the management of the ground and also for the purposes of exercise or recreation. The power to build one or more Entrances Lodges only applies to part of the Ground.
- 2.6 The Council needs to comply the requirements of Charities Act 2011, in relation to decisions relating to the Ground.
- 2.7 The whole site is open to the public for use as a recreation ground. A cricket club have two pitches within the ground, which members of the public can access (apart from when there is a cricket match). In addition there is a small children's play area and an outdoor gym open to all. A plan of the Ground is attached as Appendix 2.
- 2.8 There is a Pavilion situated in the north western corner of the site with a small car parking area. The Pavilion was constructed approximately 30 years ago and is used regularly by the Orsett Cricket Club and football teams who use the sports pitches within the Ground. The cricket club also have a net store. The use of the Recreation Ground for playing cricket is a use that may pre-date the 1937 conveyance to the Council.
- 2.9 The cricket club have an existing lease of 25 years of part of the Pavilion from 24 December 1998 which provides that the Pavilion may be used as a clubhouse in association with the playing and promotion of cricket by *bona fide* members, opposing teams and invited guests. In the past the rest of the pavilion was used by the grounds maintenance staff and for storage of equipment.
- 2.10 Orsett Cricket Club wish to surrender their current lease of their part of the building and seek a new lease for a term of 30 years on the whole of the

building. The Cricket Club's proposal is to invest in redeveloping the Pavilion and to apply for Sport England Grants to undertake this.

- 2.11 In order to secure grant funding they need to have a lease with 25 years plus unexpired term. A new rent of £4,000 per annum is proposed for the whole of the building. A license to use the cricket pitch and maintain the cricket square would also need to be granted in conjunction with the lease.
- 2.12 The Pavilion changing rooms are currently used during the football season by local football teams and the Cricket Clubs has accepted that any lease would require this arrangement to persist.
- 2.13 The Club would like to explore the possibility of refurbishing or redevelopment the Pavilion in return for the new lease. The Club's proposals may also include the use of part of the new pavilion as a "community café" and other associated community uses.
- 2.14 The Charity Commission has produced guidance for trustees of recreation-ground charities that addresses the issue that concerns the Council. This is attached as Appendix 3 On page 3, it states:

Allowing other organisations to use a recreation ground

It is quite common for sports clubs to ask recreation ground charities for permission to use part of the ground on a regular or permanent basis. In such a case you must be satisfied that this will not interfere with the charity's object of providing a recreation ground for the local inhabitants. If such use will prevent reasonable public access to all or part of the ground then it is likely that the arrangement will not be in the best interests of the charity, that is, it will hinder the furtherance of the purposes of the charity.

Example 2

The trustees may decide that the recreation ground is large enough so that, even if you were to allow the football club permanent use of part of it, there would still be sufficient space for the public to use. The part to be occupied by the club would be surplus to the requirements of the charity. In such a situation, you may well need a formal document, perhaps taking professional advice on the terms of the use by the club.

3. Issues, Options and Analysis of Options

- 3.1.1 Should The Council decide not to grant a new lease there would be little opportunity for other users to use the property with the obligations of the Charity requirements other than other similar sports or recreation users. Failure to grant a new lease to the Cricket Club may result in the current use waning and the building and recreation ground being used less until a similar sports community group could be identified to take a lease. A void period would increase The Council's costs and reduce its income while reducing the use of the recreation ground.

4. Reasons for Recommendation

- 4.1.1 To safeguard the Trust's assets overall, and for the building to be put into beneficial use and generation of income for the charity.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 There has been no specific consultation on this report.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 NA

7. Implications

7.1 Financial

Implications verified by: **Jonathan Wilson, Assistant Director of Finance.**

The financial implications of the proposal are set out in the paper and relate to the proposed annual lease charges associated with any agreed changes to the current lease arrangements. These changes will be considered further by the Corporate Director of Resources and Place Delivery under delegated powers as set out in recommendation 1.3

7.2 Legal

Implications verified by: **Gina Clarke, Corporate Governance Lawyer and Deputy Monitoring Officer**

The Council as Charitable Trustee of Orsett Cricket Ground must only act within the charity's objects and powers as set out in governing documents, together with any statutory provisions or case law that applies to the legal structure of the charity.

The terms of the Trust require the Ground to be held permanently as a public recreation ground. As such, the starting point is that disposal of any part of the Ground that will result it being used for other purposes will be contrary to that trust and therefore impermissible. In those circumstances, the Council would

need an order of the Commission to authorise it, and the Commission would need to be satisfied that such a disposition was in the charity's best interests. However, there are some circumstances where a trustee may dispose of a small proportion of the charity's land that will not affect the ability to carry out the purposes of the charity, using the power in section 6 of the Trust of Land and Appointment of Trustees Act 1996. In that event, it would not then be necessary to obtain an Order from the Charity Commission.

The Council as trustees must always act in the best interests of the charity. When it comes to selling, leasing or transferring their charity's land, the law sets out clear requirements to ensure that these important transactions are properly managed in the charity's interests and that the trustees obtain the best price reasonably in the circumstances where trustees can dispose of land without an order.

Due to the complexities external legal advice from Counsel has been obtained. It is also open to the Council to seek formal advice from the Charities Commission. Counsel is of the opinion that the Council may be able to grant the new lease to the cricket club, if it is satisfied that it is in the charity's best interests and the effect of excluding the public from the that part of the Ground is sufficiently limited that the Council's ability to carry out the charity's purposes on the rest of the Ground is not affected. The Council would still need to comply with Part 7 of the Charities Act 2011, including section 119, obtaining a surveyor's report, and s.121, relating to public notice of a disposition of designated land.

Section 117(1) of the Charities Act 2011 provides that no land may be transferred, conveyed or leased without an order made by the court or by the Charity Commission unless the requirements of section 119 have been complied with.

As the proposed disposal to the Club is a lease for more than seven years an order is not required provided that the Council acting as Charity Trustee follows the procedure set out in section 119 of the Charities Act.

Under section 119, the charity trustees must:

- Obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity.
- Advertise the proposed disposition for such period and in such manner as the surveyor has advised in their report (unless the report states that it would not be in the best interests of the charity to advertise the proposed disposition).
- Decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity (section 119(1) (c), CA 2011).

These steps must be taken before the charity trustees enter into any agreement for the sale, lease or other disposition of the land (section 119(1), CA 2011).

The qualified surveyor must:

- be a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfy such other requirement(s) as may be prescribed by regulations; and
- have ability in, and experience of, valuing land that is the same kind of land and in the same area as the land being disposed of.

The report must contain the information and deal with matters that are prescribed by regulations.

If the surveyor believes that the proposed disposition is not in the best interests of the charity (because it does not make the best use of the land), the surveyor must:

- state that opinion and the reasons for it; and
- advise on alternative ways of disposing of the land.

The governing documents of the trust stipulate that the land must be used for a particular purpose (often referred to as “designated land”). Therefore before granting a lease the Council as Trustee must follow the additional procedural steps set out in section 121 of the Charities Act 2011. This section requires that a public notice must be given of the proposed disposal, inviting representations to be made to the Council as Trustee within a time specified in the notice, being not less than one month from the date of the notice. The Council as Trustee will be required to take into consideration any representations about the proposed disposal made to them within that time.

7.3 **Diversity and Equality**

Implications Verified by: **Natalie Smith, Strategic Lead Community Development and Equalities.**

There are no direct implications from this report.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder, or Impact on Children Looked After)

8. **Background papers used in preparing the report**

- Conveyance dated 16 December 1899 of six acres of the Recreation Ground
- Conveyance dated 17 January 1936 of three acres of the Recreation Ground

- Two separate Conveyances dated 31 December 1937 conveying the land to the Council subject to the charitable trusts

9. Appendices to the report

- Appendix 1 – Guidance from the Charity Commission and Local Government Association on the council's role as charity trustee
- Appendix 2 – Plan of Orsett Recreation Ground
- Appendix 3 – Guidance Recreation Ground Charities disposal of land & buildings

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