

## **Agenda for a meeting of the Regulatory and Appeals Committee (sitting as Trustees) to be held on Thursday, 7 March 2019 at 1.30 pm, or on the rising of the earlier meeting of the Committee whichever is the later, in the Banqueting Hall - City Hall, Bradford**

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### **Members of the Committee – Councillors**

<b>LABOUR</b>	<b>CONSERVATIVE</b>	<b>LIBERAL DEMOCRAT</b>
Warburton Amran Wainwright Watson	Brown Cooke	Griffiths

### **Alternates:**

<b>LABOUR</b>	<b>CONSERVATIVE</b>	<b>LIBERAL DEMOCRAT</b>
Azam Godwin S Hussain Lal	Ellis M Pollard	R Ahmed

### **Notes:**

- This agenda can be made available in Braille, large print or tape format on request by contacting the Agenda contact shown below.
- The taking of photographs, filming and sound recording of the meeting is allowed except if Councillors vote to exclude the public to discuss confidential matters covered by Schedule 12A of the Local Government Act 1972. Recording activity should be respectful to the conduct of the meeting and behaviour that disrupts the meeting (such as oral commentary) will not be permitted. Anyone attending the meeting who wishes to record or film the meeting's proceedings is advised to liaise with the Agenda Contact who will provide guidance and ensure that any necessary arrangements are in place. Those present who are invited to make spoken contributions to the meeting should be aware that they may be filmed or sound recorded.
- If any further information is required about any item on this agenda, please contact the officer named at the foot of that agenda item.

### **From:**

Parveen Akhtar  
City Solicitor  
Agenda Contact: Claire Tomenson  
Phone: 01274 432457  
E-Mail: [claire.tomenson@bradford.gov.uk](mailto:claire.tomenson@bradford.gov.uk)

### **To:**

## **A. PROCEDURAL ITEMS**

### **1. ALTERNATE MEMBERS (Standing Order 34)**

The City Solicitor will report the names of alternate Members who are attending the meeting in place of appointed Members.

### **2. DISCLOSURES OF INTEREST**

(Members Code of Conduct - Part 4A of the Constitution)

To receive disclosures of interests from Members and co-opted members on matters to be considered at the meeting. The disclosure must include the nature of the interest.

An interest must also be disclosed in the meeting when it becomes apparent to the Member during the meeting.

*Notes:*

- (1) Members may remain in the meeting and take part fully in discussion and voting unless the interest is a disclosable pecuniary interest or an interest which the Member feels would call into question their compliance with the wider principles set out in the Code of Conduct. Disclosable pecuniary interests relate to the Member concerned or their spouse/partner.*
- (2) Members in arrears of Council Tax by more than two months must not vote in decisions on, or which might affect, budget calculations, and must disclose at the meeting that this restriction applies to them. A failure to comply with these requirements is a criminal offence under section 106 of the Local Government Finance Act 1992.*
- (3) Members are also welcome to disclose interests which are not disclosable pecuniary interests but which they consider should be made in the interest of clarity.*
- (4) Officers must disclose interests in accordance with Council Standing Order 44.*

### **3. INSPECTION OF REPORTS AND BACKGROUND PAPERS**

(Access to Information Procedure Rules – Part 3B of the Constitution)

Reports and background papers for agenda items may be inspected by contacting the person shown after each agenda item. Certain reports and background papers may be restricted.

Any request to remove the restriction on a report or background paper

should be made to the relevant Strategic or Assistant Director whose name is shown on the front page of the report.

If that request is refused, there is a right of appeal to this meeting.

Please contact the officer shown below in advance of the meeting if you wish to appeal.

(Claire Tomenson - 01274 432457)

## **B. BUSINESS ITEMS**

### **4. CHAPEL LANE ALLOTMENTS, ALLERTON, BRADFORD 1 - 46**

The Strategic Director, Corporate Resources will present a report (**Document “AQ”**) in relation to the self-management of Chapel Lane Allotments, Allerton, Bradford, which is owned by a Trust of which the Council is the sole Trustee, by the Allerton Allotment Association.

**Recommended –**

**That the following options be considered:**

- (1) Option 1, no change to the existing arrangements; or**
- (2) Option 4, to grant a Service Level Agreement to the Association.**

(Nigel Gillatt – 01274 434224)

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**Report of the Strategic Director, Corporate Resources  
to the meeting of the Regulatory and Appeals  
Committee (sitting as Trustees) to be held on 7 March  
2019.**

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**AQ**

**Subject:**

**Chapel Lane Allotments, Allerton, Bradford BD15**

**Summary statement:**

**Chapel Lane Allotments, Allerton, Bradford BD15 is held by the Council as Trustees.**

**The Trustees' decision is sought in relation to the self-management of Chapel Lane Allotments by the Allerton Allotment Association.**

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**Joanne Hyde  
Strategic Director, Corporate  
Resources**

**Portfolio: Leader of Council and Corporate**

**Report Contact: Nigel Gillatt  
Phone: (01274) 434224  
E-mail: [Nigel.Gillatt2@bradford.gov.uk](mailto:Nigel.Gillatt2@bradford.gov.uk)**

## **1. SUMMARY**

1.1 This report seeks the Trustees' decision in relation to the proposed self-management of Chapel Lane Allotments, Allerton, Bradford BD15 (the Site) by the Allerton Allotment Association (the Association).

1.2 The report outlines four options for the Trustees to consider as to which will best support the aims, objectives and responsibilities of the Charitable Trust outlined in section 6.1 (Legal Appraisal).

## **2. BACKGROUND**

### **Trust property**

2.1 The Site, which is shown edged red on the attached plan (Appendix 2), is part of a larger area owned by the Council in Trust for charities: no. 523506 Ladyhill Park and no. 523499 Allerton Road Recreation Ground (Appendix 3).

2.2 The Regulatory and Appeals Committee sitting as Trustees (the Trustees) has authority to act on behalf of the Council as Trustee which adheres with Charity Commission guidance, to provide a separation between the Council's statutory functions and its role as Trustee.

### **Allerton Allotment Association**

2.3 The Association is a not for profit unincorporated community organisation run by volunteers.

2.4 The aims of the Association, which are set out in their constitution (attached in Appendix 4) are:

2.4.1 To develop and encourage allotment gardening on the Chapel Lane site.

2.4.2 To create a healthy and enjoyable productive site.

2.4.3 To promote communication and co-operation between Council departments and allotment holders.

2.4.4 To promote sustainable methods of cultivation that promotes improvement of the land.

2.4.5 To involve local community groups in teaching them to grow their own produce and the health benefits achieved from this.

2.5 Established in 2010, the Association has made considerable progress in improving and maintaining the site through the work of dedicated plot holders, by obtaining funding and resources in kind.

### **History of the application for a Community Asset Transfer**

2.6 The Association first contacted Bradford Council Strategic Asset Management (SAM) Team in May 2016 with a request to consider a Community Asset Transfer (CAT) of the Site.

2.7 The Stage 1 application was assessed positively and the Association was invited to submit a Stage 2 (business plan), which they completed in November 2016.

2.8 The Stage 2 application, attached in Appendix 6, successfully passed an evaluation by a multi-disciplinary team comprising of all relevant services, and a long lease agreement was to be prepared by the Council's Legal Service when it became apparent that the asset was held in Trust.

2.9 The CAT application was put on hold until further clarification could be obtained from the Council's Legal Services about whether a property held in Trust may be considered for Community Asset Transfer by way of a long lease, see Section 6 Legal Appraisal.

2.10 The Trustees are requested to consider the options identified and to make a decision upon how they wish to proceed.

### **Community Asset Transfer (CAT)**

2.11 A CAT is typically undertaken by way of a long lease, which would provide the Association with the autonomy to manage the Site for the benefit of the local community and would improve their ability to attract external funds.

2.12 A long lease has been considered but was deemed inappropriate at this time as this may require the splitting of the Trust (see section 6.3); besides, the Charity Commission may object to the long lease (as it will be classed as a disposal) as may the public consultation under the Charities Act 2011 (section 6.4).

2.13 The Council's CAT Policy and Process are attached in Appendix 5.

### **Benefits to the Trust**

2.14 The Association has, over the past eight years, demonstrated sufficient commitment, dedication and enterprising skills even in the partial self-management of the Site and bringing it to a high standard exceeding the Council's minimum site maintenance capacity including self-policing, regular site clean-ups, obtaining funding for and creating an orchard, establishing a wildlife area complete with beehives and ensuring the necessary beekeeping qualifications for a group of plot holders – these are just a few examples of their capability and achievements.

2.15 Creating an opportunity for the Association to fully self-manage the Site will strengthen the objectives of the Trust outlined in section 6.1 and provide such benefits as:

2.15.1 Improving the long-term viability of the Site by way of the Association's increased sense of ownership and ability to obtain funding from a wider variety of sources, which, in view of the Council's ever diminishing resources, is one of the few available options to ensure the asset's sustainability.

2.15.2 Personalised management of the Site by local people rather than part of a wider portfolio of centrally managed allotments across the District.

2.15.3 Investment of income directly in the Site rather than a central resource to support all allotments including those that require greater cleansing and the management of anti-

social issues.

2.15.4 Ability of the Association to ensure the best use of the asset based on the need of the local community.

2.15.5 Empowerment of the Association in continuing to successfully serve the needs of the local community, which includes people of all ages, backgrounds, gender, ethnicity, sexual orientation, ability etc. thus delivering on the district’s Equality and Diversity principles.

2.15.6 Improving the health of the local community by way of getting people involved in growing their own produce and exercising through allotment gardening, thus contributing to the district’s Healthier Communities priorities.

2.15.7 Continued promotion of sustainable methods of cultivation that ensures improvement of the land and encourages creativity and innovation.

2.15.8 Better communication among the community groups involved in a common project, e.g. schools, elderly residents, people with disability, local businesses etc.

2.15.9 Environmental benefits through maintaining a fully productive allotment site with a wildlife garden, a community orchard and beehives.

### 3. OTHER CONSIDERATIONS

There are four options for the Trustees to consider: these are set out below with a brief summary of the advantages and disadvantages to the Trustees of each.

Number	Option	Advantages	Disadvantages
Option 1	No change to the existing arrangements	Tried and tested approach.  Appears to fulfil the aims of the Trust and the Council as trustees’ keeps control.	Does not give the Association the autonomy they are seeking to improve the Site.  Limited opportunities to attract external funding.
Option 2	Grant a long lease and a Service Level Agreement to manage the Site in accordance with the aims of the Trust	Provides the Association with the autonomy they are seeking to improve the Site and manage it for the benefit of the local community.  Local management of local services allow them to be tailored to suit and the Service Level Agreement should ensure a good fit with the aims and objectives of the charity.  Ability to attract funds from outside of the Council.	The Trustees have less direct control of the asset.  The Charity Commission will class this as a disposal and may object as may the public following consultation under the Charities Act 2011.  Reliant on legal agreements to ensure aims and objectives of the charity are met.

<b>Number</b>	<b>Option</b>	<b>Advantages</b>	<b>Disadvantages</b>
Option 3	The Association becomes a charitable trust and takes over as the Trustees of allotment area	<p>Ensures continuation of charitable trust.</p> <p>Ability to attract funds from outside of the Council.</p> <p>Local management of local services allow them to be tailored to suit.</p>	<p>Council no longer Trustees.</p> <p>Allotment Association do not want the costs and work associated with being Charitable Trustees.</p> <p>The process of splitting the Charity is long and time consuming process and public and charity commissioner consultation will be required under the Charities Act 2011.</p>
Option 4	Grant the Association a Service Level Agreement to run the allotments in accordance with the aims of the Trust	<p>No legal transfer of the charitable interest and the Council remain Trustees.</p> <p>The Association retains income from the Site to re-invest and is not subsidising less successful sites.</p> <p>Formally grants the Association a greater degree of autonomy to improve the Site tailored to local requirements.</p>	<p>Association less likely to be able to attract external funding as no legal interest in the Allotments, to the possible detriment of the Site.</p>

#### **4. FINANCIAL & RESOURCE APPRAISAL**

No unfavourable financial implications to the Trustees have been identified.

#### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

5.1 The Trustees are requested to identify which of the options considered is in the best interest of the Trust.

5.2 The Charity Commission Guidance advises that “Acting in the Charity’s best interests means always doing what the Trustees decide will best enable the Charity to carry out its Purposes, both now and for the future” (also see Benefits to the Trust section).

5.3 The Council’s Estates and Property Service (of which SAM Team is part) in any event must follow the required statutory procedure under the 2011 Act and seek the necessary legal advice from Legal Services.

## **6. LEGAL APPRAISAL (THE CITY SOLICITOR ACTING FOR THE COUNCIL AS TRUSTEES)**

6.1 The objectives and responsibilities arising under the Charitable Trust are as set out in conveyances – please see details outlined in the official copy of the Register of Title (Appendix 1) dated 4<sup>th</sup> May 1917 (the land tinted blue) and dated 23<sup>rd</sup> July 1917 (land tinted pink), which contains covenants (now the responsibility of the Council as trustees) as follows:

6.1a land tinted blue to support maintain and improve the hereditaments hereby granted and conveyed as and for the purposes of public pleasure grounds and allotment gardens or for either of such purposes AND

6.1b forever repairing and maintaining all roads and fences abutting the said premises

6.1c land tinted pink to support improve and maintain the hereditaments hereby granted and conveyed as and for the purposes of public pleasure grounds and allotment gardens or for either of such purposes AND

6.1d at its own expense erect maintain and repair (boundary) fences or fence walls etc. AND

6.1e no trade or business shall be carried on or bricks made... and no buildings shall be erected thereon other than a lodge or gardener's cottage and summer houses or other building of a like nature etc.

6.2 The Trustees are requested to note that the proposed Options 2 and 3 are defined as a disposal within the terms of section 6 of the Trustees of Land and Appointment of Trustees Act 1996 (power of trustees to sell or lease etc.), but such power is restricted by sections 119 and 121 of the Charities Act 2011 (the 2011 Act). A disposal requires either consent from the Charity Commission or, to avoid that requirement, the Council as trustees must give public notice of the proposed disposal inviting written representations, i.e. consult with the public and consider the representations before any disposal proceeds. A written valuation of the allotments by an independent chartered surveyor and advice whether this is the best way forward is also required. The public may object.

6.3 The proposed Options 2 and 3 effectively require a splitting of the trust, i.e. the provision of allotments would stand alone from the provision of public pleasure grounds. This could be a detriment to the trust as a whole as the trust lands, i.e. the park and allotments both currently benefit from the income from the allotment lettings. Such a disposal will need to be shown to be of benefit to all beneficiaries of the trust lands, i.e. the local residents as a whole and not only the current allotment holders.

6.4 Current Charities Commission (the Commissioners) advice is that trust purposes should at all times be promoted by its trustees in the interests of the beneficiaries of the trust unless the trust is at an end, which this trust clearly is not.

6.5 The Trustees are advised to be cautious regarding Options 2 and 3 as they may consider there is currently insufficient information of how either option will benefit the trust arrangement in addition to those which currently stand.

6.6 As has already been mentioned, the Charities Act 2011 amongst other things requires

public consultation in relation to any disposal of trust land where consent of the Charity Commission has not been obtained. It is worthy of note that the provisions of the Open Spaces Act 1906 and the Local Government Act 1972 relate to disposal of public open space land rather than trust land. The allotment land may also be part of an “allotment green belt” and special rules may apply. Further legal advice is required.

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

The Site is fully accessible and its current tenants include those with disabilities and of different ages, races and gender.

### **7.2 SUSTAINABILITY IMPLICATIONS**

Allotment gardening is sustainable.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

Allotment gardening has a positive effect of reducing the District's carbon footprint and emissions from other greenhouse gasses.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

There are no community safety implications.

### **7.5 HUMAN RIGHTS ACT**

There are no Human Right Act implications.

### **7.6 TRADE UNION**

There are no Trade Union implications.

### **7.7 WARD IMPLICATIONS**

Ward Members have been consulted and they support the principle of the self-management of the allotments.

## **8. NOT FOR PUBLICATION DOCUMENTS**

None

## **9. RECOMMENDATIONS**

9.1 Option 1 – no change to the existing arrangements.

9.2 Option 4 – to grant a Service Level Agreement to the Association.

## **10. APPENDICES**

- Appendix 1 – HMLR Title and HMLR Title Plan
- Appendix 2 – Site Plan including allotments edged in red
- Appendix 3 – Charity Commission registration details
- Appendix 4 – Allerton Allotment Association Constitution
- Appendix 5 – CAT Policy and Process
- Appendix 6 – CAT Stage 2 Application

## **11. BACKGROUND DOCUMENTS**

Copies of Conveyances dated May and July 1917.