

Report of the Director of Place to the meeting of the Regulatory and Appeals Committee to be held on 14 May 2018.

BA

Subject:

**Request for the Sale of former Park Keepers Lodge, Beacon Road,
Wibsey Bradford.**

Summary statement:

This report covers a request for the sale of the former Park Keepers Lodge and grounds at Wibsey Park, Beacon Road Bradford. This plot forms part of the land known as Wibsey Park which is a registered charity (1042146) of which the Council is Sole Trustee.

The Committee has delegated authority to act on behalf of the Council as Trustee. This is in line with Charity Commission guidance to provide a separation between the Council's statutory functions and its role as Trustee.

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Overview & Scrutiny Area:

Regulatory and Appeals

1. SUMMARY

- 1.1 This report covers a request for the sale of the former Park Keepers Lodge and grounds at Wibsey Park, Beacon Road Bradford. This plot forms part of the land known as Wibsey Park which is a registered charity (1042146) of which the Council is Sole Trustee.
- 1.2 The Committee has delegated authority to act on behalf of the Council as Trustee. This is, in line with Charity Commission guidance, to provide a separation between the Council's statutory functions and its role as Trustee.

2. BACKGROUND

- 2.1 The Parks and Greenspaces Service, which manages the park and the lodge on behalf of the trustees, has assessed the condition of the lodge and declared it surplus to their operational requirements. As such they are requesting that the trustees agree to the sale of the buildings and land and use the capital receipt for improvements to the remainder of the Park.
- 2.2 The Council holds property known as Wibsey Park, Wibsey Park Avenue, Wibsey, Bradford, which property is registered under title number WYK909727 on trust as Recreation Ground for the inhabitants of the North Bierley and neighbourhood by virtue of an Inclosure Award under the Wibsey Slack and Low Moor Inclosure Act 1880. A copy of the Title and Title plan are attached as **Appendix A**.

Wibsey Park Recreation Ground is a registered charity – charity number 1042146 – with its charitable objectives being “recreation ground for the inhabitants of North Bierley and neighbourhood”

- 2.3 Independent Legal advice has been sort to advise the Trustees of their obligations in considering the request and any restriction through the charity documentation. A copy of their report is attached as **Not for Publication Appendix D**:

The Council in its capacity as trustees should be aware that:

- The lodge does not, in effect, form part of the recreation ground and as such is separate and apart from the main body of Charity Land.
- That the sale of lodge would not alter or affect the current trusts of the charity i.e.: would not materially affect the nature of the trust and, therefore, provided that the sale was deemed to be in the best interest of the charity (not the Council.) consent of the Charity Commission would not be required.
- The enclosure award does not grant an express power of sale, however, it is advised that the Trustees have the power of sale of the lodge under the Trusts of Land and Appointment of Trustees Act 1996 act as its disposal will not alter or affect the trust.

- The Charity Commission have confirmed that, in their opinion, and based on information provided by the Council, the Trustees can sell the lodge using section 117 – 121 of the charities act 2011 and that the disposal of the land will not affect or alter the objectives of the Charity. If the Trustees adhere to the provisions of of the Charities Act 2011 the consent of the Charity Commission will not be required for the sale. A copy of the charity commission advice is attached as **Appendix C:**

3. OTHER CONSIDERATIONS

3 THE REQUEST

- 3.1 This report covers a request for the sale of the former Park Keepers Lodge and grounds at Wibsey Park, Beacon Road Bradford. This plot forms part of the land known as Wibsey Park which is a registered charity (1042146) of which the Council is Sole Trustee.
- 3.2 The lodge and associated land and out buildings amounts to 670 m2. This is a small proportion of the total area of Wibsey Park. (0.61% of the total area). Attached as **Appendix B** is a plan showing the extent of the land subject to the sale.
- 3.3 The land under consideration is the former park keeper's lodge that was last occupied May 2016. The site has been subjected to repeated vandalism and other antisocial behaviour and is now in an uninhabitable condition without serious investment.
- 3.4 The Council have, in their position as managers, have undertaken a buildings conditions survey report that identifies that there is a backlog of maintenance to the property.
- 3.5 The independent valuation has indicated a guide sale price of £95,000 less professional fees for this building and land. The net funds remaining would be ring fenced to the charity and park to be used for capital projects delivering the aims and objectives of the charity.

4. Legal Appraisal:

- 4.1 Under Section 6 of the Trustees of Land and Appointment of Trustees Act 1996, the Trustees have the powers of an absolute owner in relation to any land. This therefore includes the power to sell or otherwise dispose of an interest in the land. Section 8 provides that where, as in this case, land is subject to a Charitable Trust the power of disposal cannot be constrained by a provision in the original disposition.
- 4.2 As required by the Charities Act 2011 a written report has been obtained from a qualified surveyor acting exclusively for the trust. Subject to the Committee, acting as Trustee, being satisfied that the valuation represents the best price reasonably obtainable, consent of the Charity Commission will not be required if it chooses to approve the sale on those terms.
- 4.3 Independent legal advice has been obtained and the report is attached as **Not for Publication Appendix D**

- 4.4 The independent valuation of the land was assessed at £95,000. (**Valuation dated 18th March 2015 – Not for Publication Appendix E**)
- 4.5 As required by the Charities Act 2011 and the Local Government Act 1972 notice off the proposed sale will have to be advertised in the local press.
- 4.6 The Committee as Trustee must consider the representations made and take them into account in reaching its decision.

5. **FINANCIAL & RESOURCE APPRAISAL**

- 5.1 An independent valuation of the land has been undertaken on behalf of the Trustees in line with the Charity Commission requirements. A copy of the report is appended as **Not for Publication Appendix E**.

6. **RISK MANAGEMENT AND GOVERNANCE ISSUES**

CONSIDERATION OF THE REQUEST

- 6.1 As indicated above, the Committee acting as Trustee will need to be satisfied that the price payable is the best that can reasonably be obtained as suggested by the view of the independent surveyor.
- 6.2 In addition the Committee must consider the proposal in terms of what is in the best interests of the charity. Charity Commission Guidance advises that this means;

"Acting in the charity's best interest's means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future."
- 6.3 The purposes of the Trust are;

"Recreation ground for the inhabitants of North Bierley and Neighbourhood" and to be used for amateur sport for the general public and mankind and to provide buildings facilities and open space.
- 6.4 The question for the Trustees therefore is how disposing of the area of land will benefit the Park from the perspective of the inhabitants of North Bierley and Neighbourhood and how it would do so more than through retaining the land. If there are negatives as well as positives then a balance will have to be drawn between them to find the optimal position for the Park and the public.
- 6.5 The area of land available to the public will be no less than available now. The lodge and surrounding land and buildings has never formed part of the publicly accessible land is has solely been used as a depot and / or residential property. Given that holding the land for the provision of a park is the core object, the Trustees should assume that it should be retained unless satisfied that the disposal will lead overall to a better park or pleasure ground with greater benefit to the inhabitants.
- 6.6 The loss of this small area of land is unlikely to have an adverse impact on the Park as an amenity or the inhabitants.

6.7 It is proposed that the proceeds from any sale would be reinvested in the remainder of the site for the benefit of the users of the Park. Works could be agreed with the friends of Wibsey Park and other user groups. This would overall improve the Park as an amenity and more than outweigh the loss of the small area.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

None

7.2 SUSTAINABILITY IMPLICATIONS

None

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

None

7.4 COMMUNITY SAFETY IMPLICATIONS

None

7.5 HUMAN RIGHTS ACT

None

7.6 TRADE UNION

None

7.7 WARD IMPLICATIONS

None

8. NOT FOR PUBLICATION DOCUMENTS

Appendix D: Independent Legal Advice

Appendix E: Independent Valuation

Not for publication (NFP) under Paragraph 5 (Legal Privilege) of Schedule 12A Local Government Act 1972 (as amended) and it is considered that, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information for the following reason: it is in the overriding interests of proper administration that the Trustees are made fully aware of the legal implications of any decision without the risk of prejudice to the Council's case in any future legal proceedings.

9. OPTIONS

- 9.1 To advertise the sale of the lodge and, subject to no objections being received, sell the lodge through the Council's sale of assets process and reinvest the proceeds into the park. Should objections be received, the committee may need to reconsider its decision to dispose of the lodge in the light of such objections.
- 9.2 To refuse the sale of the property and associated land at this time

10. RECOMMENDATIONS

- (1) That the Strategic Director, Place be authorised to advertise the sale of the former Park Keepers Lodge and grounds at Wibsey Park, Beacon Road Bradford and, subject to no objections being received, to make the necessary arrangements to sell the property through the Council's Sale of Assets process and to reinvest the proceeds in the Park.
- (2) That, should objections be received to the sale, the Strategic Director, Place submit a further report to this Committee for consideration.

11. APPENDICES

Appendix A: Title Deed and Conveyance Plan showing the extent of the charity land.

Appendix B: Plan showing the area requested to be sold.

Appendix C: Charity Commission Advice

Appendix D: Independent Legal Advice (*Not for Publication, Paragraph 5 (Legal Privilege of the Local Government Act 1972)*)

Appendix E: Independent Valuation (*Not for Publication, Paragraph 5 (Legal Privilege of the Local Government Act 1972)*)

12. BACKGROUND DOCUMENTS

None