

Report of the Strategic Director, Corporate Resources to the meeting of the Regulatory and Appeals Committee to be held on 15 August 2019

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Subject: Wibsey Community Garden (part of Wibsey Park) Wibsey Bradford

Summary statement:

The Council's Estates and Property Service acting on behalf of the Council's Neighbourhood and Customer Service is contemplating the grant of a lease (for less than 7 years) of part of Wibsey Park known as Wibsey Community Garden owned by the Council in trust.

The Regulatory and Appeals Committee members acting as the Council as Corporate Trustees has a statutory duty under the Charities Act 2011 to obtain advice before the grant of the lease, to consider the advice, and to reach a decision that the terms are the best that can reasonably be obtained for the charitable trust.

This report provides the required advice and sets out options and recommendations.

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Overview & Scrutiny Area:

1. SUMMARY

- 1.1 The Council's Estates and Property Service acting on behalf of the Council's Neighbourhood and Customer service is contemplating the grant of a lease (for less than 7 years) of part of Wibsey Park now known as Wibsey Community Garden owned by the Council in trust.
- 1.2 The Regulatory and Appeals members acting as the Council as Corporate Trustees have a statutory duty to obtain advice on the grant of the lease, to consider the advice, and to reach a decision that the terms are the best that can reasonably be obtained for the charitable trust.
- 1.3 This report provides the required advice and sets out options and recommendations.

2. BACKGROUND

- 2.1 By an Inclosure Award under the Wibsey Slack and Low Moor Inclosure Act 1880, Wibsey Park was awarded to the North Bierley Local Board to be held in trust as recreation grounds for the inhabitants of North Bierley and its neighbourhood.
- 2.2 The City of Bradford Metropolitan District Council is the successor to the North Bierley Local Board and therefore owns Wibsey Park on trust.
- 2.3 In disposing of land held on charitable trust the trustees must comply with the Charities Act 2011.
- 2.4 Wibsey Community Garden is occupied by Bradford Organic Communities Service Limited, Company registered number 05042246 , (hereinafter referred to as "BOCS"), with whom the Council has agreed terms, subject to contract, for the grant of a lease for a duration of seven years less one day.
- 2.5 The heads of terms are: -
- (a) Exclusion from the security of tenure provisions of the Landlord and Tenant Act 1954, part 2;
 - (b) The land and property not to be used other than for growing crops for consumption on site, for growing crops for sale, for production and sale of seeds and young plants, as a café, and for training, education and therapeutic programmes related to any of horticulture, healthy eating, healthy lifestyles, nature study and natural environment conservation;
 - (c) Tenant responsible for all repairs and maintenance and for insurance;
 - (d) Rent a peppercorn for the first five years, then 15% of net income from the property;
 - (e) Tenant to meet annually increasing targets on performance indicators.

3. OTHER CONSIDERATIONS

- 3.1 The trustees must obtain and consider the advice on the proposed disposition from a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition.
- 3.2 The trustees may consider Simon Hicks of the Council's Estates and Property

Service to be such a person as is referred to in 3.1. He has been a chartered surveyor since 1990 and has since then worked continuously in that capacity as an estate surveyor for the Council (see Appendix 1 for further background information)

- 3.3 The objectives of the trust which owns the Wibsey Community Garden site correspond closely with those of the Council. In view of Mr. Hicks' experience over twenty-nine years with the Council, he is a person who may reasonably be believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed grant of the lease described in section 4 below.

4. FINANCIAL & RESOURCE APPRAISAL

Mr. Hicks' advice is as set out in this section.

The terms outlined are the best that can reasonably be obtained for a lease of the site.

The following are relevant considerations:-

- i) The selection of a lessee followed a competitive process. The coming to an end of the previous lease was within the public domain and enquiries from seven organisations as to the future of the land were taken to qualify them to receive an invitation to submit an expression of interest in taking a lease.
- ii) Three submissions were received, which were one from Bradford Organics Composting Service and two from other organisations.
- iii) These were considered and scored under the headings considered to be relevant.
- iv) The submission from Bradford Organics Composting Service narrowly scored the highest, but as it was weak in one respect, additional details were requested and the CEO and her colleague were interviewed.
- v) One of the submissions said that the organisation from whom it was received could pay a rent; however the Council's Estates Service was concerned more with applicants' proposed activities, partnerships and ways of involving the local community in the site itself and in Wibsey Park.
- vi) The Bradford Organics submission was strongest in those respects.
- vii) A group of Council officers worked together and collaborated closely with the Wibsey Ward councillors on the wording of the invitations to applicants and in the assessment of submissions received.
- viii) Mr Hicks was in the officer group, whose members shared with each other their views based on their varied experience and expertise. His final opinion has been informed by the views of officers and Ward councillors.
- ix) After the deadline for submission of expressions of interest but before the Council's decision on the selection process was notified to the organisations concerned, Bradford Organics Composting Service changed its name to Bradford Organic Communities Service Limited.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

The risk of the lessee failing to meet its obligations under the lease and the Council as Corporate trustees assuming responsibility of the site is of relevance.

6. LEGAL APPRAISAL

1. The Charities Act 2011 regulates the disposal of interests in charitable trust land, particularly section 117.
2. Section 117 states:

117 Restrictions on dispositions of land: general

(1) No land held by or in trust for a charity is to be conveyed, transferred, leased or otherwise disposed of without an order of—

- (a) the court, or
- (b) the Commission.

But this is subject to the following provisions of this section, sections 119 to 121 (further provisions about restrictions on dispositions) and section 127 (release of charity rentcharges).

(2) Subsection (1) does not apply to a disposition of such land if—

- (a) the disposition is made to a person who is not—
 - (i) a connected person (as defined in section 118), or
 - (ii) a trustee for, or nominee of, a connected person, and
- (b) the requirements of—
 - (i) section 119(1) (dispositions other than certain leases), or
 - (ii) section 120(2) (leases which are for 7 years or less etc.),have been complied with in relation to it.

(3) The restrictions on disposition imposed by this section and sections 119 to 121 apply regardless of anything in the trusts of a charity; but nothing in this section or sections 119 to 121 applies to—

- (a) any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by—
 - (i) any statutory provision contained in or having effect under an Act, or
 - (ii) any scheme legally established,
- (b) any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and College Estates Act 1925,
- (c) any disposition of land held by or in trust for a charity which—
 - (i) is made to another charity otherwise than for the best price that can reasonably be obtained, and
 - (ii) is authorised to be so made by the trusts of the first-mentioned charity, or
- (d) the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—
 - (i) is granted otherwise than for the best rent that can reasonably be obtained, and
 - (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.

(4) Nothing in this section or sections 119 to 121 applies to—

- (a) any disposition of land held by or in trust for an exempt charity,
- (b) any disposition of land by way of mortgage or other security, or
- (c) any disposition of an advowson.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

Of the three applications received, that from BOCS was strongest in respect of the proposed activities, partnerships with other community groups and ways of involving the local community in the site itself and in Wibsey Park, which may be expected to reach out to disadvantaged groups.

7.2 SUSTAINABILITY IMPLICATIONS

BOCS is expected to use the site for the use agreed, which will promote environmental sustainability.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

BOCS is expected to use the site for the use agreed, which will promote reductions in the Council's and the wider District's carbon footprint and emissions of other greenhouse gases.

7.4 COMMUNITY SAFETY IMPLICATIONS

The proposed lease will enhance community cohesion.

7.5 HUMAN RIGHTS ACT

The proposals support some of the duties under the Human Rights Act 1998.

7.6 TRADE UNION

There are no trade union implications

7.7 WARD IMPLICATIONS

- 7.1 The charitable trust on which the Council owns the site relates to North Bierley and its neighbourhood.
- 7.2 Accordingly, the lessee has been selected and the lease terms have been agreed such as to benefit Wibsey Ward above other wards, without excluding benefits to a wider area.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS

Not applicable as this is not a report to an Area Committee.

7.9 IMPLICATIONS FOR CORPORATE PARENTING

None identified

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None Identified

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

The decisions open to the Trustees are

- a) That the person who has provided the advice on the proposed grant of a lease is or is not someone they reasonably believe to have the requisite ability and experience to provide them with competent advice on the proposed disposition.

If the Trustees' decision at a) above is that the person who has provided the advice is someone they do reasonably believe to have the requisite ability and experience to provide them with competent advice on the proposed disposition; then the decision to be made is whether

- b) The terms are or are not the best that can reasonably be obtained for the charity.

10. RECOMMENDATIONS

Members are requested to decide

10.1 That the person who has provided the advice is someone they believe to have the requisite ability and experience to provide competent advice on the proposed disposition

10.2 That the terms of the lease are the best that can reasonably be obtained for the charity

11. APPENDICES

11.1 Outline curriculum vitae of Mr Simon Hicks MRICS, Chartered surveyor.

11.2 Location plan no. R-026-011 showing Wibsey Community Garden edged red.

12. BACKGROUND DOCUMENTS

None

Appendix 1: Mr. Simon Hicks MRICS, Chartered Surveyor

Mr Hicks has extensive experience in managing the Council's property estate, acting for the Council in most cases as landlord to commercial and voluntary sector bodies, in respect of a wide variety of properties including shops, offices, industrial premises, sports grounds and other recreational premises, and community facilities. This has involved not only arranging new leases but also bringing about events under existing leases such as to benefit the Council's interests. In some cases those interests have been mainly or only financial, in others, the matters have covered social, educational, regeneration and conservation objectives. His experience includes arranging non-residential leases to not-for-profit tenants.

Given his experience over twenty-nine years with the Council, he is a person who may reasonably be believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed grant of a lease of Wibsey Community Garden.