

ASHFIELD DISTRICT COUNCIL



Council Offices,
Urban Road,
Kirkby in Ashfield
Nottingham
NG17 8DA

Agenda

Charities Committee

Date: **Monday, 16th July, 2018**

Time: **10.00 am**

Venue: **Committee Room, Council Offices, Urban Road,
Kirkby-in-Ashfield**

For any further information please contact:

Lynn Cain

l.cain@ashfield.gov.uk

01623 457317

CHARITIES COMMITTEE

Membership

Chairman: Councillor Tony Brewer

Councillors:

Rachel Bissett
Paul Roberts
Sam Wilson

David Griffiths
Phil Rostance
Jason Zadrozny

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SUMMONS

You are hereby requested to attend a meeting of the Charities Committee to be held at the time/place and on the date mentioned above for the purpose of transacting the business set out below.



R. Mitchell
Chief Executive

AGENDA

Page

1. To receive apologies for absence, if any.
2. **Declarations of Disclosable Pecuniary or Personal Interests and Non Disclosable Pecuniary/Other Interests.**
3. To receive and approve as a correct record the minutes of the meeting of the Committee held on 10th July, 2017. 5 - 8
4. **Teversal Community Centre and Recreation Ground (Charity Number 522310) - Update.** 9 - 18
5. **Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust.** 19 - 22

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CHARITIES COMMITTEE

Meeting held in the Committee Room, Council Offices, Urban Road, Kirkby-in-Ashfield,

on Monday, 10th July, 2017 at 6.30 pm

Present: Councillor David Griffiths in the Chair;
Councillors Amanda Brown and Cheryl Butler.

Apologies for Absence: Councillors Tony Brewer and Phil Rostance.

Officers Present: Lynn Cain, Ruth Dennis and Matthew Kirk.

In Attendance: Councillor Paul Roberts.

CC.1 Declarations of Disclosable Pecuniary or Personal Interests and Non Disclosable Pecuniary/Other Interests

There were no declarations of interest made.

CC.2 Minutes

RESOLVED

that the minutes of the meeting of the Committee held on 5th April, 2017, as now submitted, be received and approved.

CC.3 Teversal Community Centre and Recreation Ground (Charity Number 522310) - Update

The Director of Legal and Governance (and Monitoring Officer) presented the report and took the opportunity to update the Committee on progress since the previous Charities Committee meeting held on 5th April, 2017, as follows:-

Temporary Facilities for the Cricket Club

Committee were advised that temporary changing facilities continued to be provided to the Cricket Club by the Council for the current cricket season.

Financial Position

The Trust had recorded a deficit of £9.7k for the financial year 2016/17 and when added to the losses brought forward from previous years this meant that the accumulated deficit as at 31st March, 2017 was £129.8k. To date in 2017/18, further expenditure of £7k had occurred but this has been mostly due to the agreed separation of utilities (i.e. water and electricity) for future billing to the Clubs and Visitors' Centre.

Progress with Leases

The Clubs and the Visitors' Centre had all been given draft leases for consideration during March 2017 and had been in contact with the Council since that time regarding various issues:-

Visitors' Centre

The Visitors' Centre had advised that they had employed a solicitor to undertake the leasing process and negotiations on their behalf.

Bowls Club

The Bowls Club were concerned that they would not be able to meet their rental obligations once the rent free/discounted period had expired. They had requested an extension to the rent free period or to come to some other arrangement for the upkeep of their facilities. The bowling season ended each year in August for the winter and any arrangements to offset this quiet income period would be helpful in relation to any rental obligations.

The cost of meeting the buildings insurance and legionella testing requirements was of concern to the Club and it was felt that adding the cost to Members' subscriptions would be prohibitive. There were ongoing additional costs for maintaining the greens and affiliation fees to the tune of around £300 per year which the Club felt uncertain about paying at the present time pending the outcome of the current lease negotiations and the future viability of the Club.

The Club was well respected and was the only ground in the north of the County to host County-wide matches. They had a good reputation for training young bowlers and were an asset to the local community. The Committee were advised that the facilities at the ground had been built in 2007 and had been part funded by themselves (via fund raising activities and five generous personal donations from Club Members), the Teversal Trust and the Coal Board.

The Director of Legal and Governance (and Monitoring Officer) took the opportunity to remind Members of the incremental rent levels and percentage discounts that has been previously set by Council for the Visitors' Centre and Club leases. Members discussed the concerns raised by the Bowls Club and the Council's ongoing commitment towards maintaining the Teversal Trust car parking facilities.

The timeline for finalising the leases, consulting CISWO and then presenting the proposals to the Charity Commission for approval was estimated at around 6 to 9 months and Members considered this timeline in the context of the Clubs and Visitors' Centre being able to apply and have access to grant funding to assist their growth and development in the future.

Committee Members discussed possibilities for fund raising with Mr. Harby, the Bowls Club representative in attendance at the meeting and suggested that he contact the Council's Community Empowerment Team who could offer some support and guidance. Mr. Harby advised that some of the Club's fund raising opportunities had ceased since the Teversal Grange licenced premises had been shut and that it was difficult to be continually finding new avenues to raise funds to keep the Club afloat.

Members discussed ownership of the car park and any potential for charging for parking in the future. Having considered various suggestions at length at the last meeting it was agreed that this was not a viable option at this time.

Future Proposal for the Trust

Members were reminded that the Football Club had previously expressed an interest in discussing the possibility of creating a new charity to take over the Trust in its entirety from the Council. Following a meeting in October 2016, it was agreed that discussions could be held to consider the proposal and the Council expressed a view that the future running of the Trust should be a matter for all the users of the site to be involved in.

In November 2016, at the request of the Football Club, Officers met with a resident of the local area who has no existing links with any of the Clubs but has experience running charities to see if he could be of assistance as an independent representative.

A further meeting was held with the independent representative during June 2017 and it was understood that the three sporting clubs had held further discussions and had agreed that they would like to explore forming a new Charity to take over the Trust from the Council.

Their outline proposals included:

- establishing a Management Committee which has an independent Chairperson and independent representatives in addition to Club representatives;
- the Council writing off the Trust debt and the Cricket Club retaining the temporary facilities whilst they obtain funding for a new pavilion;
- confirmation that any lease agreements, such as that of the Visitors Centre, would be honoured.

As a result of these discussions, the Clubs had now been asked to prepare a detailed proposal which would enable the Council to consider the option fully and consult with CISWO as appropriate. Committee noted that the intentions of the Visitors' Centre in respect of this proposal was not clear at the present time but a meeting of the Teversal Grange Advisory Committee would be arranged in due course to discuss the proposal in more detail.

RESOLVED that

- a) the current financial position and the progress made in respect of the leases, be noted;
- b) the outline proposals from the Clubs in respect of the long term future of the Trust and the Clubs being asked to prepare a more detailed proposal for consideration by the Council, be noted;

- c) having considered the comments raised by the Bowls Club as part of their draft lease negotiations, it be agreed that the incremental rent levels and discount periods, as previously set by the Council, remain unchanged and no recommendation be made to Council to make any alterations at this present time.

Reason:

To comply with the Scheme (Constitution) of the Teversal Community Centre and Recreation Ground, the Council's Constitution and charities legislation overall. The Trustee must act in the best interests of the long term future of the Trust and seek to generate income to sustain the charity.

CC.4 Section 100A Local Government Act, 1972
Exclusion of Press and Public

RESOLVED

that in accordance with the provisions of Section 100A of the Local Government Act 1972, the press and public be now excluded from the meeting during the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act, in respect of which the Proper Officer considers the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

CC.5 The Surrender of the Ground Lease with St. John Ambulance on land to the rear of Lammas Leisure Centre

The Director of Legal and Governance (and Monitoring Officer) requested the Committee to consider approving the surrender of the ground lease by St. John Ambulance on land held in trust by Ashfield District Council.

RESOLVED

that Council be recommended to approve the following:-

- a) the request for surrender of the ground lease by St. John Ambulance on land held in trust by Ashfield District Council;
- b) delegated authority being granted to the Director of Legal and Governance (and Monitoring Officer), to sign a deed of surrender, on behalf of the Council, as trustee of the site.

Reason:

To facilitate the surrender of the lease and return the small piece of land to the trustee.

The meeting closed at 7.25 pm

Chairman.

Report To:	CHARITIES COMMITTEE	Date:	16 JULY 2018
Heading:	TEVERSAL COMMUNITY CENTRE AND RECREATION GROUND (CHARITY NUMBER 522310) - UPDATE		
Portfolio Holder:	N/A		
Ward/s:	STANTON HILL AND TEVERSAL		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

To provide Members with an up to date position in respect of the Teversal Community Centre and Recreation Ground (Charity Number 522310).

Recommendation(s)

Committee is asked to:

- a) Note the Minutes of the meeting of the Teversal Grange Advisory Committee held on 27 June 2018 (attached to the report as Appendix 1);
- b) Note the current financial position as set out in the report;
- c) Note the update as set out in the report regarding the progress in relation to the proposal from the Clubs in respect of the long term future of the Trust;
- d) Authorise the Director of Legal and Governance (Monitoring Officer) to continue to explore options, including the potential for the installation of a gate, to resolve the reported Anti-Social Behaviour incidents occurring on the site;
- e) Consider giving approval for a proposed event during August this year (the Nottinghamshire AAA's Summer League athletics race) as set out in the report.

Reasons for Recommendation(s)

To comply with the Scheme (Constitution) of the Teversal Community Centre and Recreation Ground, the Council's Constitution and charities legislation overall.

The Trustee must act in the best interests of the long term future of the Trust.

Alternative Options Considered

(with reasons why not adopted)

The Constitution of the Teversal Community Centre and Recreation Ground, the Council's Constitution and charities legislation must be complied with.

Detailed Information

Advisory Committee

An Advisory Committee took place on 27 June 2018. The Minutes of the meeting are attached as Appendix 1 to the report. Issues raised or feedback received from the sports clubs and Visitors Centre are included below where relevant.

Temporary Facilities for the Cricket Club

Temporary changing facilities continue to be provided to the Cricket Club by the Council for the current cricket season. The Council was informed on 1 July that a section of the floor to the changing rooms was showing signs of collapse. Officers visited site on 2 July and works to make the floor safe temporarily were carried out the same week. The company which supplied the unit has been asked to visit to advise on remedial works. The costs for the remedial works will further increase the deficit on this facility for recovery by the Council.

Financial Position

The accumulated deficit as at 31 March 2018 was £143,261. To date in 2018/19, further expenditure of £4,203 has been incurred. The cost of the above remedial works and potential further costs associated with any future proposals to install a gate (see below) will also further increase the deficit to be recovered by the Council.

Future Proposal for the Trust

The Committee will recall that the Football Club informed the Council that it would like to enter into a dialogue about the possibility of a new charity taking over the Trust in its entirety from the Council.

The Council agreed at its meeting in October 2016 to hold discussions about the proposals. The Council believes that the future running of the Trust should be a matter for all the users of the site to be involved in.

A number of meetings have been held between the Council, the Clubs and their representative who is assisting them with the preparation of the business plan in the intervening period.

The three sporting clubs have been in discussions and have agreed that they would like to explore forming a new Charity to take over the Trust from the Council. Their outline proposals include: establishing a Management Committee which has an independent Chairperson and independent representatives in addition to Club representatives; the Council writing off the Trust debt and the Cricket Club retaining the temporary facilities while they obtain funding for a new pavilion. It has also been confirmed that any lease agreements, such as that of the Visitors Centre, would be honoured.

The Assistance Director for Place and Wellbeing recently met with the Clubs and their representative and provided a template for compiling a business plan and connected them

with the Council's Senior Regeneration Officer for Enterprise & Investment who would be offering guidance and support for completing the business plan as required.

At the Advisory Committee meeting, the Football Club representatives explained that the Visitors' Centre were currently not part of the Trust takeover proposals following receipt of a letter in 2017 from the Visitors' Centre declining the request to be involved. However, the offer was still on the table and should they now wish to be part of the discussions to take over the running of the Trust, they would be welcomed and included as part of the business plan development process.

The Clubs have been asked to prepare a detailed proposal which would enable the Council to consider the option fully and consult with CISWO.

Reported Anti-Social Behaviour

The Chairman of the Advisory Committee, Councillor Helen-Ann Smith advised the recent meeting that she had been contacted by many residents recently complaining that car cruisers were using the Teversal Grange car park as a racing track and generally causing noise and nuisance.

For the period 29 June 2017 to 29 June 2018 the following incidents have been reported to the police in relation to the Teversal Grange site:

Burglary - 5

Road related and ASB (usually revving of engines, loud music played from car, vehicles doing handbrake turns) – 24

Criminal damage – 1

Theft of motor vehicle – 1

Damage caused by a vehicle losing control and hitting a building – 1

The reports to the police are typically made in the evening/overnight.

Following recent reports, Community Protection Officers will patrol the area when priorities allow.

The area is also becoming heavily affected with litter, mainly packaging from fast food outlets which suggests this is being brought on site by the car cruisers.

Some preliminary work had been undertaken by Officers regarding the possibility of gating the site to stop the cars gaining access to the car park at night. The installation of car park barriers/gates by other organisations has been shown to have reduced littering and anti-social behaviour. The Council has not earmarked any funding to pay for a gate and its installation so some further discussions would be required to secure the cost as appropriate.

The arrangements for opening and closing of the gate each morning and night were discussed at the Advisory Committee meeting and the Clubs recognised that responsibility may fall to them and thought would need to be given to the amount of key holders and opening and closing times agreed. The morning opening of the site would be the more difficult to accommodate easily. The Cricket Club representatives advised that the car cruisers were often on the site by early evening (6.00 p.m.) and continued to gather well into the late evening and night. This would pose tremendous difficulties for any key holders having to try and clear the car park site at night to enable the premises to be secured and the gate locked until the following morning. Clearly the Council would not be prepared to put any individual at risk in endeavouring to secure removal of the car owners from the site each evening.

The noise and nuisance being created by car cruisers on the site was obviously increasing and further work would now need to be undertaken to address the issue. It was proposed that the Council would arrange a meeting with the Police and Community Protection Team to consider the matter further and the Club representatives were asked to also discuss any potential solutions and feed them back to the Council in readiness for the Charities Committee meeting on 16th July, 2018.

The users of the site have been asked to keep a record of when car cruisers are using the car park including the times, dates and number of vehicles to enable the Council to understand more clearly the extent of the problem to identify a suitable solution. Whilst the installation of a gate appears to be an option, there is a concern that this will not be successful if cars are accessing the site at relatively early times in the evening when the site is legitimately being used by the Clubs, the Visitors Centre and the public for access to the trails. The Trust object requires that the site should be accessible for these purposes.

Forthcoming Event

The Charities Committee is asked to consider giving approval for the following event to take place on the site:

Event Name: Notts AAA's Summer League

Date: 1st August 2018

Time: 7.15 p.m. – 8.45 p.m.

Event Location: Teversal Visitors' Centre and Trails Network

Anticipated Attendance Numbers: 250 – 300

Event Description: Free running races for the local athletic clubs and running clubs in Nottinghamshire and Derbyshire on the Teversal Trail Network. The group provide Marshalls along the running route and for car parking. First Aid will be provided by St. Johns Ambulance. Group will clean site of any litter after the event.

Facilities Used: Trails Network. Site car park and field next to cricket club for car parking with Marshalls provided. Teversal Football Club changing and toilet facilities. Visitors' Centre to open for additional toilet facilities.

The Clubs and the Visitors' Centre confirmed that they were aware of the event, which has taken place annually for a long time and recommended that the Charities Committee approve the event.

Implications

Corporate Plan:

Enable thriving, prosperous and self-sufficient communities where people shape their own futures.

Ensure the best use of our assets

Legal:

The legal and constitutional issues are detailed in the report.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	There is no revenue budget for this service. Failure to recover the deficit will adversely impact the Council's financial position.
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
Increasing deficit.	Ongoing negotiations with the site users for the future management of the site, including leases and/or taking over the trust.
Failing to adequately deal with the reported Anti-Social Behaviour on the site impacting on users and residents living nearby. Potential gating solutions might create risks for the individuals opening and closing the gates as set out in the report.	Work will be undertaken to assess the extent of the anti-social behaviour and to ensure any solutions are formulated so as to reduce risks and alleviate and impact on the site users and the residents.

Human Resources:

There are no human resource issues identified in the report.

Equalities:

There are no equality and diversity issues identified in the report. The business case when produced by the Clubs will be assessed by the Council against many factors but these will include equality and diversity issues.

Other Implications:

None

Background Papers

None

Report Author and Contact Officer

Ruth Dennis
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TEVERSAL GRANGE ADVISORY COMMITTEE

Meeting held in the Committee Room, Council Offices, Urban Road, Kirkby-in-Ashfield,

on Wednesday, 27th June, 2018 at 5.30 pm

Present: Councillor Helen-Ann Smith in the Chair;

Mr. Pete Cockerill (Football Club), Mr. Andrew Gregson (Cricket Club), Mr. Barry Harby (Bowls Club), Mr. Phil Hauton (Cricket Club), Mr. David Reed (Visitors' Centre) and Mr. Christopher Slack (Football Club).

Apology for Absence: Councillor Glenys Maxwell.

Officers Present: Lynn Cain, Ruth Dennis, Theresa Hodgkinson and Matthew Kirk.

TT.1 Appointment of Chairman

AGREED

that Councillor Helen-Ann Smith be appointed as Chairman of the Committee for the forthcoming year.

TT.2 Declarations of Interest

No declarations of interest were made.

TT.3 Minutes

AGREED

that the minutes of the meeting of the Committee held on 23rd March, 2017 be received and approved.

TT.4 Progress in relation to potential future Trust Arrangements

The Director of Legal and Governance reminded the Committee that the Football Club put forward a proposal in 2017 to consider the possibility of the Football, Cricket and Bowls Clubs taking over the running of the Teversal Trust from the Council as a collaborative concern.

The Council had agreed to work with the Clubs via a representative (not connected to the Clubs or the Trust) to consider ways in which the Council could support their development of a suitable business plan. The bid to take over the running of the Trust would need to be robust and sustainable to secure any type of agreement from CISWO and ultimately the Charities

Commission and incorporate suitable arrangements for securing the future operation of the Visitors' Centre.

The Assistance Director for Place and Wellbeing who had recently met with the Clubs and their representative, had offered a template for compiling a business plan and connected them with Fardad Amirsaedi (Senior Regeneration Officer for Enterprise & Investment) who would be offering guidance and support for completing the business plan as required.

As discussed at the meeting, the Trust was currently running at a deficit of £143,261 for year end 2017/18 with a further deficit of £4,203 for the 2018/19 financial year to date. An estimate of £41,000 had been given for replacing the temporary Cricket Club Pavilion and details surrounding the requirements of a Market Rights Policy, the annual costs involved and the need for necessary signage for running markets had also been sent to the Clubs.

To conclude, the Assistance Director for Place and Wellbeing stated that the business plan was now needed to be completed by the Clubs and the Council would await sight of the document upon its completion.

Committee Members briefly discussed the current position. The Football Club representatives took the opportunity to explain that the Visitors' Centre were currently not part of the Trust takeover proposals following receipt of a letter in 2017 from the Visitors' Centre declining the request to be involved. However, the offer was still on the table and should they now wish to be part of the discussions to take over the running of the Trust, they would be welcomed and included as part of the business plan development process.

The Clubs were at present waiting for their representative to return from his holiday to commence work on compiling the necessary business plan for submission.

AGREED

that the Council continues to offer support and guidance to the Clubs and their representative regarding the compilation of a business plan for taking over the running of the Teversal Trust from the Council as a collaborative concern.

TT.5 Gating the Site

The Chairman introduced the item and advised that she had been contacted by many residents recently complaining that car cruisers were using the Teversal Grange car park as a racing track and generally causing noise and nuisance. The issue had been going on for some time and some preliminary thought had been given to the possibility of gating the site to stop the cars gaining access to the car park at night.

The Chairman drew Members' attention to the plan attached to the agenda which indicated the possible positioning of the gate on the site and all present agreed that the position would be acceptable. The Director of Legal and Governance advised that at present the Council had not earmarked any funding to pay for the gate and its installation so some further discussions would be required to secure the cost as appropriate.

The Committee acknowledged that the opening and closing of the gate each morning and night would most probably become the Clubs' responsibility and thought would need to be given to the amount of key holders etc. The Cricket Club representatives advised that the car cruisers were often on the site by early evening (6.00 p.m.) and continued to gather well into the late evening and night. This would pose tremendous difficulties for any key holders having to try and clear the car park site at night to enable the premises to be secured and the gate locked until the following morning.

The Chairman suggested that the use of a Public Spaces Protection Order (PSPO) might help to alleviate the problems being caused by the car cruisers but Members were informed securing a PSPO on trust land would be difficult and in any event the process was fairly lengthy and would probably not help to address any of the nuisance problems in the short term.

The Director of Legal and Governance advised that she was not aware that the nuisance cars were gathering quite so early on the site and categorically stated that the Council would not be prepared to put any individual at risk in endeavouring to secure removal of the car owners from the site each evening.

The noise and nuisance being created by car cruisers on the site was obviously increasing and further work would now need to be undertaken to address the issue. It was proposed that the Council would arrange a meeting with the Police and Community Protection Team to consider the matter further and the Club representatives were asked to also discuss any potential solutions and feed them back to the Council in readiness for the Charities Committee meeting on 16th July, 2018.

AGREED

that the Council arranges a meeting with the Police and Community Protection Team to consider the escalating problem of car cruisers on the Teversal Grange car park site with the Club representatives also discussing any potential solutions and feeding them back to the Council in readiness for the Charities Committee meeting on 16th July, 2018.

TT.6 Events

The Committee were asked to consider the following event request:-

Event Name: Booth Decorators League Race, Notts AAA's Summer League

Date: 1st August 2018

Time: 7.15 p.m. – 8.45 p.m.

Event Location: Teversal Visitors' Centre and Trails Network

Anticipated Attendance Numbers: 250 – 300

Event Description: Free running races for the local athletic clubs and running clubs in Nottinghamshire and Derbyshire on the Teversal Trail Network. The group provide Marshalls along the running route and for car parking. First Aid will be provided by St. Johns Ambulance. Group will clean site of any litter after the event.

Facilities Used: Trails Network. Site car park and field next to cricket club for car parking with Marshalls provided. Teversal Football Club changing and toilet facilities. Visitors' Centre to open for additional toilet facilities.

AGREED

that Charities Committee be recommended to approve the event as submitted.

The meeting closed at 6.07 pm

Report To:	CHARITIES COMMITTEE	Date:	16 JULY 2018
Heading:	SUTTON-IN-ASHFIELD RECREATION GROUNDS 2006 CHARITABLE TRUST		
Portfolio Holder:	N/A		
Ward/s:	CENTRAL AND NEW CROSS AND ST MARYS		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

To seek authority to appoint an additional Trustee.

Recommendation(s)

To recommend that Council agrees to appoint, by Deed, Mr Roger Pratt as an additional independent Trustee to the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust.

Reasons for Recommendation(s)

The Council has previously approved a series of land transactions in order to release the Lammas Recreation Ground from the Trust restrictions to which it is subject and to impose the Trust restrictions upon part of the Sutton Lawn Pleasure Ground.

For the legal reasons set out in the report, an additional Trustee needs to be appointed in order for the land transactions to progress.

The Council has been advised that the Trustee should have no prior/ongoing connections to the Council in order to ensure independence.

Alternative Options Considered

(with reasons why not adopted)

Not appointing an additional Trustee is not an option for the legal reasons set out in the report.

Other options for the appointment may be considered.

Detailed Information

Background

Three parcels of land were conveyed to the then Sutton-in-Ashfield Urban District Council in 1914 by the 6th Duke of Portland and the Marquess of Titchfield as a gift. The three parcels of land consist of the Lammas Recreation Ground, Priestsic Recreation Ground and part of the Sutton Lawn Pleasure Ground (off the former Penn Street) all in Sutton-in-Ashfield.

Following the decision to build the Lammas Leisure Centre on part of the Lammas Recreation Ground, the Council became aware that, in conveying the land, a Charitable Trust was established requiring the parcels of land to be kept as open space and “used for recreation and pleasure ground” purposes. A clause was also entered into whereby if the land ceased to be used for recreation and pleasure ground purposes for 12 months or more then the Duke’s and Marquess’ successors could take the land back or “re-enter”. The successors are The Welbeck Estates Company Limited and The Welbeck Estates Company (Title) Limited (hereafter “Welbeck Estates”).

The Council entered into lengthy discussions with the Charity Commission in order to identify a means of freeing the Lammas Recreation Ground from the Trust restrictions. This can be achieved by the Council as Trustee “swapping” restricted land with other land within its corporate ownership which is not so restricted. Part of the Sutton Lawns was identified for this purpose and various authorities were given by Council some time ago in order for this to proceed. Before the transfer could take place the “re-entry” restriction had to also be removed.

Over a period of more than three years, the Council entered into negotiations with Welbeck Estates to release the “re-entry” clause. The negotiations were finally successful and the necessary legal work has been undertaken which allows the Council to proceed to deal with remaining Trust issues.

Legal Advice

In accordance with Council approvals, external legal support has been obtained in respect of the land transactions. The Council in its capacity of Trustee must have separate external legal provision as the Director of Legal and Governance cannot act for both sides of the transaction.

In obtaining this external advice, further stumbling blocks which make the progress of the transactions more complex have emerged.

The Council as Trustee has no express legal powers to transfer the land as the Trust was established pursuant to a Conveyance. As such, the Council will need to apply to the Charity Commission for permission to transfer the land and this will also require public consultation prior to the transaction taking place. Previously, the Charity Commission had indicated to the Council that their permission was not necessary and it was believed the Council was relying on its common law powers to transfer the property. Under Section 118 of the Charities Act 2011, because the Council in its capacity as Trustee is swapping trust land with a corporate asset then this is classified as a connected transaction which also needs Charity Commission consent. In addition, because of its dual role in the transaction, the Council has been advised that it needs to appoint a second unconflicted trustee to pass the necessary resolutions to confirm the land swap.

Appointment of Trustee

In light of the specialist legal advice it is recommended that a second trustee is appointed to the Charitable Trust. Once all necessary resolutions and transactions have been completed, the

Council may choose to revert back to being the sole trustee or may decide it is prudent to retain a second trustee to avoid any similar problems occurring in the future.

Section 36 of the Trustee Act 1925 gives the Trustee the ability to appoint an additional trustee by Deed.

The additional trustee must be chosen carefully to avoid any potential conflict of interest. The Council has been advised that the additional trustee could not be an employee of the Council or an elected Member of the Council. Solicitors often act as trustees in these circumstances, but again a Trustee could not be from firms of Solicitors who act or have acted for the Council.

Having ruled out a number of potential options for a trustee due to potential conflicts of interest, the Council approached Hopkins Solicitors LLP who have offices in Sutton-in-Ashfield, Mansfield and Nottingham and are not a firm used by the Council. Following discussions with Officers, Mr Roger Pratt, a Partner at Hopkins Solicitors LLP agreed to become an additional trustee for the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust subject to the approval of the Council. Mr Pratt has considerable experience in relation to complex land transactions and trust matters.

Further reports to Committee and Council will be presented once the Trustee appointment is made in order to reaffirm previous resolutions and to approve any additional requirements as advised by the specialist lawyers, in order to progress with the land transactions.

Implications

Corporate Plan:

Ensure the best use of our assets

Legal:

The legal issues and relevant legislation are highlighted in the body of the report.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	It is not possible at this point to set an accurate estimate for the costs of these transactions (land transactions, external legal fees and the second trustee’s fees) - the transactions will be completed in a phased approach and quotes will be obtained for each phase. At this time, it is anticipated that the costs can be contained within existing budgets, but this will be closely monitored.
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
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Failure to appoint a suitable second trustee would mean the required land transactions could not proceed which means that a number of related transactions are also put at risk and the Council could face enforcement action from the Charity Commission.	To appoint a second trustee to allow related transactions to proceed.
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Human Resources:

There are no human resource issues associated with the recommendations in the report.

Equalities:

(to be completed by the author)

There are no equalities issues associated with the recommendations in the report

Other Implications:

None.

Background Papers

None.

Report Author and Contact Officer

Ruth Dennis

DIRECTOR OF LEGAL AND GOVERNANCE

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