

<b>Report To:</b>	<b>CHARITIES COMMITTEE</b>	<b>Date:</b>	<b>16 JULY 2018</b>
<b>Heading:</b>	<b>SUTTON-IN-ASHFIELD RECREATION GROUNDS 2006 CHARITABLE TRUST</b>		
<b>Portfolio Holder:</b>	N/A		
<b>Ward/s:</b>	<b>CENTRAL AND NEW CROSS AND ST MARYS</b>		
<b>Key Decision:</b>	NO		
<b>Subject to Call-In:</b>	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 6<sup>th</sup> 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:**

<b>Budget Area</b>	<b>Implication</b>
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:**

<b>Risk</b>	<b>Mitigation</b>
-------------	-------------------

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.
--	---

**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

[r.dennis@ashfield.gov.uk](mailto:r.dennis@ashfield.gov.uk)

01623 457009