

Report To:	CABINET
Date:	20 JANUARY 2025
Heading:	SUTTON-IN-ASHFIELD RECREATION GROUNDS 2006 CHARITABLE TRUST
Executive Lead Member:	CLLR VICKI HESLOP – EXECUTIVE LEAD GOVERNANCE
Ward/s:	ALL
Key Decision:	YES
Subject to Call-In:	YES

Purpose of Report

To update Cabinet on the current position relating to the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust, to note that the necessary notification in relation to disposal of land at Sutton Lawn Recreation Ground has taken place and to re-confirm the proposed exchange of land.

Recommendation(s)

It is recommended that Cabinet:

1. Acknowledges and considers any objections and responses outlined within this report in relation to the notification of disposal of land forming public open space at Sutton Lawn Recreation Ground in accordance with section 123(2A) of the Local Government Act 1972;
2. Re-confirms the land exchange between the Council and the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust whereby the Council receives the part of the Lammas Recreation Ground identified in plan A attached from the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust and disposes of the part of Sutton Lawn Recreation Ground identified in plan B attached to the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust;
3. Authorises the Executive Director Governance to complete the necessary land ownership adjustments in consultation with the Executive Lead Member and carry out any other consequential legal formalities once The Charity Commission have provided consent to complete the land exchange.

Reasons for Recommendation(s)

The land exchange is the final step necessary in order to release part of the Lammas Recreation Ground from the Charitable Trust to which it is subject and to impose Charitable Trust restrictions upon part of the Sutton Lawn Recreation Ground.

Alternative Options Considered

Not to proceed with the land exchange – this would have serious consequences for the Council and the Charitable Trust and is **not recommended**.

Detailed Information

Background

Members may recall from previous reports to Cabinet that 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 consisted of the Lammas Recreation Ground, Priestsic Road Recreation Ground and part of the Sutton Lawn Recreation Ground (off the former Penn Street), all in Sutton-in-Ashfield.

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 ceases to be used for recreation and pleasure ground purposes for 12 months or more then the Duke’s and Marquess’s 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”). A Deed of Variation and Deed of Release was negotiated and completed with Welbeck Estates to deal with the “re-entry” issues. The completion of this work meant that the Council could proceed to deal with remaining Trust issues relating to the site.

Charitable Trust Issues – Land Exchange

At Cabinet on 19 January 2006 and 16 April 2007 it was resolved that the Charitable Trust would legally exchange part of the Lammas Recreation Ground (currently part of the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust) with part of Sutton Lawn Recreation Ground (currently owned by the Council) to enable the Lammas site to be developed. The extent of the land was identified by way of a plan.

Decisions regarding the Charitable Trust land must be made by the Council as Sole Trustee of the land as separate from the Council acting on its own behalf. As part of the Charitable Trust work undertaken by the Council the Charitable Trust was formally registered as the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust. Council agreed at its meeting on 16 October 2008 to introduce new governance arrangements for its land held on Trust, creating the Charities Committee and setting out the terms of reference for both the Committee and Council in respect of Trusts for which the Council is the trustee. In accordance with those terms of reference (which have been updated in the interim), the Council is responsible for dealing with the approval of land transactions, with the Charities Committee making recommendations to Council.

At the Council meeting in October 2008, the Council confirmed earlier decisions of the Cabinet which included the exchange of land made by Cabinet on 16 April 2007. It was resolved that it was

in the best interests of the Charitable Trust to dispose of part of the Lammas Recreation Ground to the Council (in its corporate capacity) and receive in return part of Sutton Lawn Recreation Ground from the Council (in its corporate capacity). The Council, albeit the Trustee, is able to take such action pursuant to its Common Law powers and this approach has been in accordance with informal guidance from the Charity Commission.

The land exchange has been delayed for various reasons including the receipt of advice that the Council in its capacity as trustee would need an additional independent trustee - the appointment of an independent trustee was subsequently approved by Charities Committee and full Council and the appointment completed, however more recently the independent trustee has retired from the charitable trust. There continues to be ongoing correspondence between external legal advisors appointed to act on behalf of the Council as trustee and The Charity Commission who require further information and clarification before they will be in a position to consider whether the land exchange is expedient in the interests of the Charitable Trust.

Notification - section 123(2A) of the Local Government Act 1972 (the “Act”)

The Council has a statutory duty to notify the public of a proposed disposal under the provisions of section 123 of the Local Government Act 1972. The Sutton Lawn Recreation Grounds are public open space and in accordance with section 123(2A) of the Act, notification of a disposal must be advertised for two consecutive weeks in a local newspaper to enable the public to raise objections. The Council must consider any objections made. The land exchange is a “disposal” under the terms of the legislation. On 17 July 2014 Cabinet authorised the Chief Executive to notify the public of the proposed disposal in accordance with section 123 of the Act.

Notification of the proposed disposal of land forming public open space at Sutton Lawn Recreation Ground dated 4 November 2024 was published in the Ashfield Chad for two consecutive weeks on 6 November 2024 and 13 November 2024. The notification was accompanied by copies of plan A (Lammas) and Plan B (Sutton Lawn) showing the relevant land edged in red on both plans, as well as an explanatory note. In addition, for the period 4 November 2024 to 6 December 2024, the notification, plans, explanatory note and a statement with FAQ’s were made available at the Council offices at Urban Road, on a webpage in the Legal Information Section of the Council’s website, and copies were attached to an entrance gate to Sutton Lawn Recreation Ground. Members were provided with the documents by email on 4 November 2024. Members of the public were invited to send any objections and/or representations by email or by post addressed to the Executive Director Governance to be received by 5pm on 6 December 2024 - however no objections or representations were received.

In addition to the section 123 notification, The Charity Commission require a separate consultation to be undertaken to help beneficiaries of the Charitable Trust to understand the issues at hand. The Charitable Trust consultation commenced on 9 December 2024 and members of the public are invited to submit any representations or objections by 5pm on 17 January 2025. Any representations or objections received will be considered by the Council’s Charities Committee and full Council, before being referred to the Charity Commission for a decision on the land exchange.

Best consideration

The Council’s power to dispose of land at Sutton Lawn Recreation Ground is contained in section 123(1) of the Act. This power is subject to section 123(2) which provides that the Council is under an obligation to obtain ‘best consideration’ for land to be disposed of. The assessment is one for the Council to make. In addition, there is a “General Consent” which authorises a disposal at an undervalue where “*the local authority considers that the purpose for which the land is to be*

disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

- i) the promotion or improvement of economic well-being;*
- ii) the promotion or improvement of social well-being;*
- iii) the promotion or improvement of environmental well-being; and*

the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).”

Independent valuation advice and external legal advice have been taken and whilst the land values involved in the land exchange are not equal (the Council will be making a disposal of land held by the Council for a negative consideration by way of the land exchange because the land given up does not have a matching value), they are within the cap under the General consent rule. The independent valuation carried out on 5 June 2023 valued the land at Sutton Lawn Recreation Ground at £190,000 and valued the land at Lammas Recreation Ground at £55,000, on the basis that the use associated with each property was as public open space only and that no development of the land had taken place.

It is considered that the disposal of part of Sutton Lawn Recreation Ground is premised on all three limbs of the General consent (above), and that once the land exchange has taken place the land will be kept and maintained as a recreation ground for the benefit of the residents of the District in accordance with the charitable purposes of the Charitable Trust and in accordance with the Council's own health and wellbeing, environmental and economic objectives as set out in the Council's Corporate Plan and associated strategies.

The Council's Corporate Plan highlights its vision to enable everyone to live healthier and happier lives, including by creating healthy and sustainable places, and sets out its ongoing commitment to maintaining high standards and continued improvement in green spaces so that residents and visitors enjoy living in and visiting Ashfield. The Council's Public Open Space strategy 2016-2026 sets out how parks and green spaces in particular make an important contribution to quality of life by providing free, accessible provision at a local level making a significant contribution to health and wellbeing, social inclusion and physical regeneration.

It is acknowledged that in addition the proposed disposal of land at Sutton Lawn Recreation Ground and land exchange may assist the Council with avoiding any action taken against the Council as trustee to give effect to the terms of the Charitable Trust.

In order to proceed, it is recommended that Cabinet:

1. Acknowledges and considers any objections and responses outlined within this report in relation to the notification of disposal of land forming public open space at Sutton Lawn Recreation Ground in accordance with section 123(2A) of the Local Government Act 1972;
2. Re-confirms the land exchange between the Council and the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust whereby the Council receives the part of the Lammas Recreation Ground identified in plan A attached from the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust and disposes of the part of Sutton Lawn Recreation Ground identified in plan B attached to the Sutton-in-Ashfield Recreation Grounds 2006 Charitable Trust;
3. Authorises the Executive Director Governance to complete the necessary land ownership adjustments and carry out any other consequential legal formalities once The Charity Commission have provided consent to complete the land exchange.

Implications

Corporate Plan: Implications are set out in the body of the report.

Legal: The legal authority for the proposed disposal by the Council is Section 123 of the Local Government Act 1972 and related regulations. The legal power for the acquisition by the Council is Section 120 of the Local Government Act 1972. [RLD 16/12/2024]

Finance: There are no direct financial implications arising from this report. [PH 17/12/2024]

Budget Area	Implication
General Fund – Revenue Budget	None
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Risk:

Risk	Mitigation

Human Resources:

There are no direct HR implications contained within the report (KH 16.12.24).

Environmental/Sustainability:

Implications are set out in the body of the report.

Equalities:

There are no equalities issues associated with the recommendations in the report and an equalities impact assessment is not required.

Other Implications:

N/A

Reason(s) for Urgency

N/A

Reason(s) for Exemption

N/A

Background Papers

Plan A (Lammas) and Plan B (Sutton Lawn)

Report Author and Contact Officer

Louise Ellis

ASSISTANT DIRECTOR - LEGAL

louise.ellis@ashfield.gov.uk

01623 457310

Sponsoring Executive Director

Ruth Dennis

EXECUTIVE DIRECTOR - GOVERNANCE

ruth.dennis@ashfield.gov.uk

01623 457009