

## **Council (sitting as Trustee) – 23 September 2013**

### **Bloxwich and Leamore Recreation Ground**

**Service Areas:** Neighbourhood Services  
Children's Services  
Resources

**Wards:** Blakenall Ward (Site also borders wards of Bloxwich East and Birchills Leamore)

#### **1. Summary of report**

- 1.1. Walsall Council was appointed manager of the recreation and pleasure grounds at Bloxwich in 1930. The trust land comprises a large area of open grounds, laid out currently to provide football pitches and open grassland, as well as a skate board park, a small sensory garden, tennis courts, bowling green and pavilion.
- 1.2. The terms of the 1930 Trust Deed provide that the Council is responsible for holding and maintaining the trust land for the purposes of playing fields and for public recreation or pleasure grounds, for the benefit to the inhabitants of Walsall, and for no other purpose. There is a restriction within the Trust Deed prohibiting the erection of any building or buildings or other structures, except for a pavilion or caretaker's house or other structures necessary or appropriate for its use as a recreation and pleasure ground. There is a further prohibition on the use of the land for the purposes of fairs or wakes.
- 1.3. Finally, there is a requirement that all income from the use of the recreation and pleasure ground be utilised for the upkeep and maintenance of the land, and for no other purpose.
- 1.4. The Council wishes to construct a new and improved leisure centre to serve this part of the Borough thereby delivering against its improved health and well-being agenda. Although a number of options have been explored, the most appropriate option involves constructing upon a part of the trust land closest to the existing leisure centre. This report seeks authority to pursue discussions and negotiations with the Charity Commission with a view enabling the development of a new leisure centre, whilst maintaining and improving facilities on the remaining trust land.
- 1.5. Further, the terms of the trust have been breached where the Council, some decades ago, set aside a parcel of land for use by Sunshine School. As a consequence of an application by Sunshine School to become an Academy, the Council is now under a statutory duty to transfer that land to the school. Negotiations with the Charity Commission should therefore, at the same time, seek to remedy the position in relation the Sunshine School land.

## **2. Recommendations**

2.1. That, subject to paragraph 2.2 below, the Trustees (being 'the Council') authorise officers to liaise with the Charity Commission to negotiate a scheme to enable:

- (a) Trust land at the rear of the existing Bloxwich Leisure Centre to be utilised for the purposes of providing a new leisure centre; and
- (b) Trust land at the rear of Sunshine School to be transferred to the school;

On the basis that the value of those parcels of trust land is either:

- (i) Reimbursed to the trust by way of financial compensation; or
- (ii) Reimbursed to the trust by way of land swap; or
- (iii) Reimbursed to the trust by way of a suitable and agreeable scheme of works for the improvement and enhancement of the existing recreation and pleasure grounds.

2.2 That the details of any scheme negotiated with the Charity Commission are brought back before Trustees (Council) for approval.

2.3 That Trustees note the Plan at Annex C to this Report which shows the trust land edged in red; the approximate area of land required for Bloxwich Leisure Centre edged in blue; and the land at the rear of Sunshine School shaded yellow.

## **3. Background Information.**

3.1 Walsall Council is manager of the trust land at Bloxwich recreation ground, by virtue of a Deed dated 1930. This means that the Council is only able to deal with the land in accordance with the terms of the Trust and any action taken in respect of the land must be taken in the best interests of the Trust. The duties and responsibilities of the Council, as Trustees, include acting at all times in the best interest of the trust. As such, it is the trust land, and the purposes for which that land is held on trust, which must be considered foremost.

3.2 **Bloxwich Leisure Centre.** There have been a number of potential schemes considered for the demolition of the existing leisure centre and the building of a new leisure centre on this site. One option explored the relocation of the leisure centre onto land solely in the ownership of the Council (and not subject to the trust). This was, however, subsequently considered inappropriate due to existing commitments to users of other Council premises which would require to be removed for the scheme. Another scheme saw the new leisure centre constructed entirely on trust land, which was considered also to be undesirable.

- 3.3 As a consequence of the above, the preferred scheme is to see the existing leisure centre demolished, and a new leisure centre built in its place. However, to accommodate the new leisure centre, with its new and improved facilities as well as the necessary car parking, additional land is required to that currently owned by the Council and it is proposed that part of the new building development will “spill over” onto the trust land. Trustees are referred to the Plan at Annex D which shows the intended development.
- 3.4 Unlike Sunshine School, no trust land has been re-allocated or re-used for the purposes of the leisure centre as yet. However, without the ability to utilise trust land for the purposes of the leisure centre, the development scheme is unlikely to come to fruition.
- 3.5 **Sunshine School.** In or around the early 1960s a building was constructed on the trust land to the rear of Sunshine School. It is thought that this was a teaching block. Some time later this building was removed and replaced by a caretaker’s house. The caretaker’s house remains on the site currently. Prior to the caretaker’s house being erected, the land was also fenced to form a part of the school. These actions were all carried out by the Council, contrary to the terms of the Trust Deed.
- 3.6 The Charity Commission is aware of this situation and, as Trustees, the Council is required to remedy the situation. The most obvious step would be to return the land to open recreation ground. However, as Sunshine School is now in the process of becoming an Academy, and the land upon which the caretaker’s house stands has formed a part of the school for some decades, the Council is under a statutory obligation to transfer the land (by sale or by lease) to the Academy, pursuant to the Academies Act. As such, a suitable and agreeable “cy-pres” scheme must be negotiated to enable the removal of this land from the trust and the transfer to the Academy, that is to say a scheme which enables the position to be remedied and which sits as close as possible to the original intentions of the trust.
- 3.7 **The Charity Commission.** The Charity Commission is a regulatory body responsible for overseeing the conduct of charitable affairs. Trustees may be aware of the Charity Commission’s previous investigations and discussions in relation to the construction of part of the Oak Park Leisure Centre by Brownhills Urban District Council on trust land prior to 1974, in breach of trustee obligations.
- 3.8 To date, some correspondence has been entered into with the Charity Commission in relation to the Sunshine School position, and only initial enquiries have been made in relation to the Leisure Centre. Trustees should be aware that the Commission has the power to take enforcement action against the Council for breaches of an originating trust. It is therefore

important that officers are authorised to negotiate with the Commission to seek to achieve extended land for the Leisure Centre and a solution to the school position. The Commission will undoubtedly want to be assured of the Council's management of the trust land. A clear Council decision is therefore imperative.

- 3.9 It is officers' view that the most effective way of dealing with the Sunshine School situation is to seek to negotiate with the Commission a scheme, in a similar way to that which was done at Oak Park Leisure Centre. At Oak Park, the Commission exercised its powers to make an order to effect a land swap in the same locality, of equal value and size to that which had been acquired from the trust for the purposes of the leisure centre and that which had been leased to a local football club. In the Oak Park situation, the Commission could have directed that the leisure centre and football club be demolished but the negotiated scheme enabled a compensatory resolution to be achieved. In the case of Sunshine School, however, the situation is complicated further by the request by the School for Academy status.
- 3.10 Whilst it appears to officers that there is no suitable adjacent land to transfer to the trust in lieu of the school land, there is scope to negotiate either a financial compensatory sum to be transferred to the trust (and which would then be utilised in the maintenance of the trust land) or to effect an improvement scheme. Officers consider that the latter option of an improvement scheme is more likely to be received positively by the Commission and most appropriate for the trust land at Leamore, given the intention to provide new and updated indoor leisure facilities at the new leisure centre. This would serve to provide an improved leisure and recreational facility for all, indoor and out. It is for this reason that it makes sense that the Sunshine School land and the leisure centre land are dealt with together as a single scheme and that negotiations with the Charity Commission deal with both matters together. (Officers preparing the scheme will, however, ensure that the two matters are capable of being separated in the event that such is needed.)
- 3.11 The proposed redevelopment of the leisure centre envisages further changes to the outdoor space comprised within the trust. These include the rearrangement of football pitches; the removal of fencing along one side of the public footpath (commonly called "The Slang") to open up further grassed areas for football purposes; and the creation of a new children's play area for younger children, close to the pavilion. These works would therefore form a part of the scheme, although if the proposal is acceptable to the Commission in principle, officers will need to prepare a comprehensive scheme design for submission to the Commission and will seek approval of Council in the first instance. Additional works would be required, as the

above mentioned works are unlikely, alone, to offset the cost of the leisure land or the school land.

- 3.12 **Valuation.** Officers are undertaking initial valuations of the parcels of land for the purposes of entering into negotiations with the Commission. This has involved the instruction of the District Valuer. In accordance with statutory trust provisions, the value of the land must take into account any uplift which can be achieved. This means that in the case of the Sunshine School land, the value of the caretaker's house may have to be taken into account, albeit limited to use for the purposes of the school.

#### **4. Resource considerations**

- 4.1 Financial: There is undoubtedly a financial consideration to be taken into account in the compensation to the trust from both the Children's Services Directorate and from the Leisure Department. Valuation of the parcels of land will be carried out by the District Valuer.
- 4.2 Legal: The Charity Commission has a number of powers that it could employ in relation to the breach of trustee duties. It will be important for officers to seek to negotiate a position which enables resolution in the least negative manner and which gives effect to an acceptable outcome for both the Trust and for Children's Services and Leisure Departments of the Council.
- 4.3 Staffing: Work on this project is being undertaken by officers in Legal, Property, Leisure and Children's services as a part of their daily roles.
5. **Citizen Impact:** The trust land given over to the Sunshine School has not been open for use by the public for some decades. That position remains. Throughout the proposed development of the leisure centre, there will be no impact upon the trust land, save for that trust land which is acquired for the purposes of building the leisure centre (subject to a cy-pres scheme being approved). If the Commission agree to a scheme to reposition the football pitches, removal of fencing and new children's play area, amongst other things, there will undoubtedly be some disruption to public use of those parts of the trust land whilst development takes place.

Overall, the intended outcome of the scheme to construct a new leisure centre is to encourage "more people, more active, more often". The intention is to convert an area of little used, day-time outdoor space to an indoor space of high intensity year-round use, so that many more people will be able to improve their health and well-being, fitness levels and social interaction.

6. **Community Safety:** The participation in leisure, recreation, activity and sport is seen as a positive diversionary activity which helps reduce anti social behaviour.

**7. Environmental Impact:** None

**8. Performance and risk management issues.**

(i) Risk: None

(ii) Performance Management: None

**9. Equality Implications:** The design of the proposed new leisure centre will meet all current DDA and equalities legislation at the time of construction.

**10. Consultation:** As part of the Charity Commission process for considering exercising its powers, it is duty bound to undertake consultation of interested parties. As the purpose of the original Deed related to coal workers in the locality of the recreation and leisure ground, the Council has already entered into some discussions with the Coal Industry Social Welfare Organisation (CISWO) and CISWO will be included in future discussions where relevant.

**List of Annexure:**

**A:** Transcript of Deed of Trust dated 30 December 1930

**B:** Trust Deed Plan.

**C:** Plan showing the land at the rear of Sunshine School shaded yellow, the approximate area of land required for Bloxwich Leisure Centre edged in blue and the trust land edged in red;

**D:** Plan of the intended redevelopment of Bloxwich Leisure Centre;

**Author**

Alison Sargent  
Planning Solicitor  
For the Head of Legal and Democratic Services

Dated: 13 September 2013

Transcript of  
Deed Poll and Declaration of Trust

**This Deed Poll and Declaration of Trust** is made the **thirtieth** day of **December** One thousand nine hundred and thirty BY the Mayor Alderman and Burgess of the Borough of Walsall (hereinafter called the Corporation) WHEREAS

1. The Corporation is seised in fee simple in possession free from incumbrances of the hereditaments described in the Schedule hereto subject as to the hereditaments and premises secondly described in the same Schedule to the Exceptions and Reservations and the covenants and conditions contained in a certain Conveyance of the eighth day of August One thousand nine hundred and twenty and made between the Right Honourable Edwards George Percy Third Baron Hatherton of the first part Henry Howard Tucker Arthur James Llewellyn William Joseph Pearman Smith Samuel Mills Slater and Victor Cooke of the second part and the Corporation of the third part as far as the same are now subsisting and capable of taking effect.
2. By Section 20 of the Mining Industry Act 1920 a fund was established (hereinafter called the Miners Welfare Fund) to be applied to purposes connected with the social wellbeing recreation and conditions of living of workers in or around coal mines and the duty of allocating money from the said fund is vested in the Committee (hereinafter called the Miners Welfare Committee) appointed under subsection 3 of the said section as varied by section 1 of the Mining Industry (Welfare Fund) Act 1925 and section 15 of the Mining Industry Act 1926.
3. A Committee [styled] the Cannock Chase and Pelsall District Miners Welfare Committee (hereinafter called the District Committee) consisting of representatives of coal owners and workers in or about coal mines in the Cannock Chase and Pelsall District has been set up to advise the Miners Welfare Committee in regard to allocations from the Miners Welfare Fund for the purposes aforesaid within the said District.
4. The Miners Welfare Committee on the recommendation of the District Committee have allocated from the same Miners Welfare Fund the sum of Eight thousand pounds for the purpose of providing for a Recreation or Pleasure Ground for the use and benefit of the inhabitants of Walsall in the County of Stafford having regard to the fact that a large proportion of such inhabitants consist of workers in or about coal mines and their dependents.
5. The Corporation have been appointed to administer and [coukel] the said recreation or Pleasure Ground after the same has been equipped for that purpose by the District Committee

**NOW this Deed witnesseth AND it is hereby declared as follows**

1. The Corporation will forever hereafter hold the said premises upon trust to permit the same to be used forever hereafter as Playing Fields and for Public Recreation or Pleasure Ground

for the use and benefit of the inhabitants both sexes of Walsall aforesaid and for no other purpose whatsoever.

2. The Corporation will not erect or permit to be erected on the said land or any part thereof any building or buildings or other erections whatsoever except a Pavilion or Pavilions or Caretakers House or other similar buildings necessary or appropriate for its use as a Recreation or Pleasure Ground.
3. The Corporation shall be the managers of the said Recreation or Pleasure Ground with power to make such Byelaws as may be necessary for the proper management thereof.
4. The said Recreation or Pleasure Ground shall not at any time hereafter be used as a wake or fair ground.
5. The Corporation shall at all times hereafter use all the income accruing out of or derived from the said Recreation or Pleasure Ground for the upkeep and maintenance of the same and for no other purpose

**IN WITNESS** whereof the Corporation has caused its Common Seal to be hereunto affixed the day and year first before written.

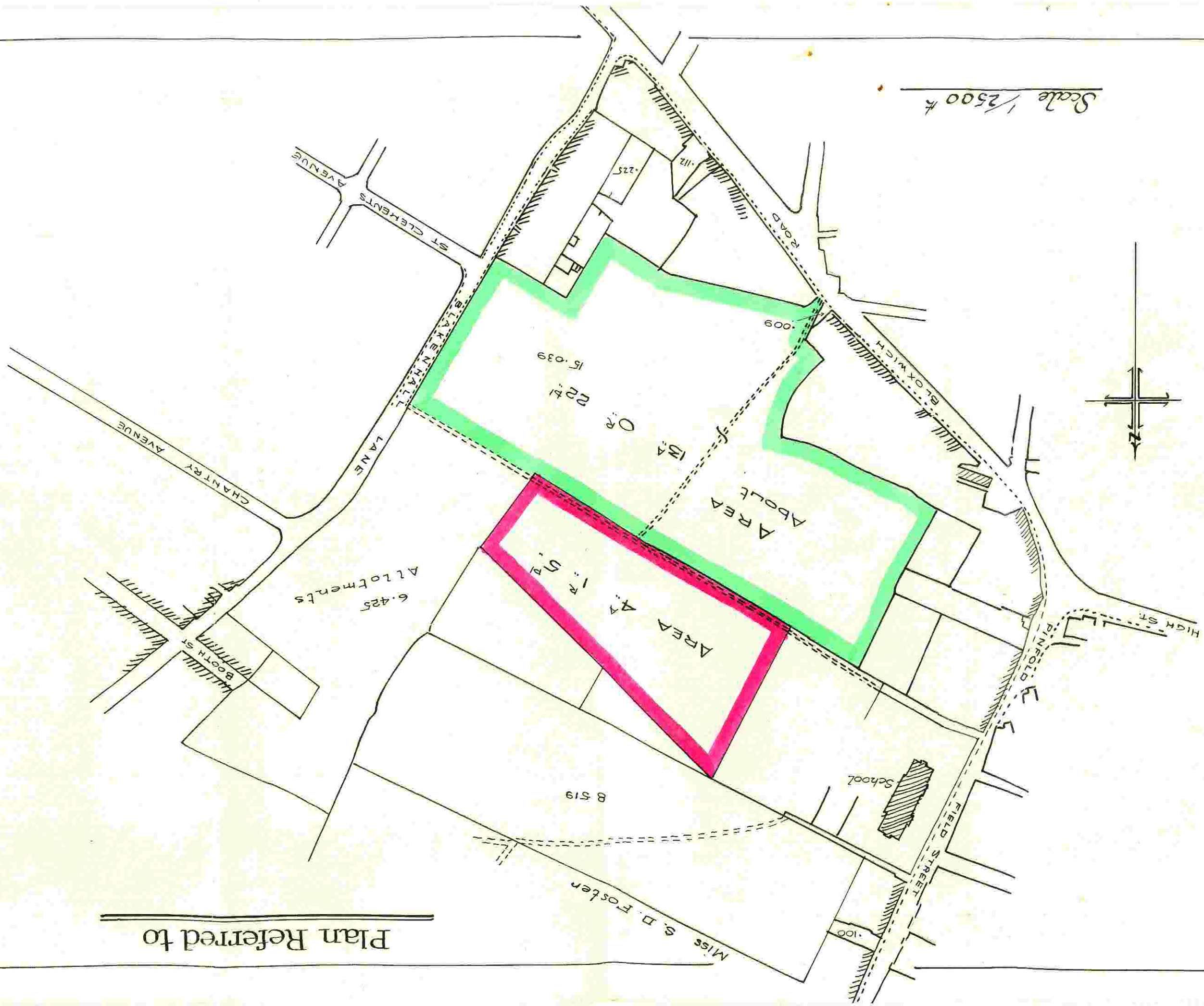
**THE SCHEDULE** before referred to

**FIRST ALL** that piece or parcel of land situate at the rear of Blakewall Lane and Field Street Leamore Walsall in the County of Stafford containing an area of Four acres one rood and five poles or thereabouts and which said piece of land formed part of a larger piece of land comprised in and conveyed to the Corporation by a Conveyance dated the eighth day of September One thousand nine hundred and nine made between Samuel Sanders Frederick Thomas Sanders and Elizabeth Wootton Wootton of the one part and the Corporation of the other part and is for the purpose of identification more particularly delineated on the plan hereto annexed and thereon edged pink.

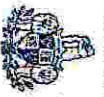
**SECONDLY ALL** that piece or parcel of land situate at the rear of Blakewall Lane The Pinfold and Bloxwich Road Leamore aforesaid adjoining on the Northern boundary thereof next the land First hereinbefore described and having a frontage to Blakewall Lane aforesaid of Three hundred and ninety five feet or thereabouts and which said piece or land contains in the whole Thirteen acres and twenty two poles or thereabouts and formed part of a larger piece of land comprised in and conveyed to the Corporation by a Conveyance dated the eighth day of August One thousand nine hundred and twenty one and made between the Right Honourable Edward George Percy Third Baron Hatherton of the first part Henry Howard Tucker Arthur James Llewellyn William Joseph Pearman-Smith Samuel Mills Slater and Victor Cooke of the second part and the Corporation of the third part and is more particularly delineated on the said plan hereto annexed and thereon edged green.



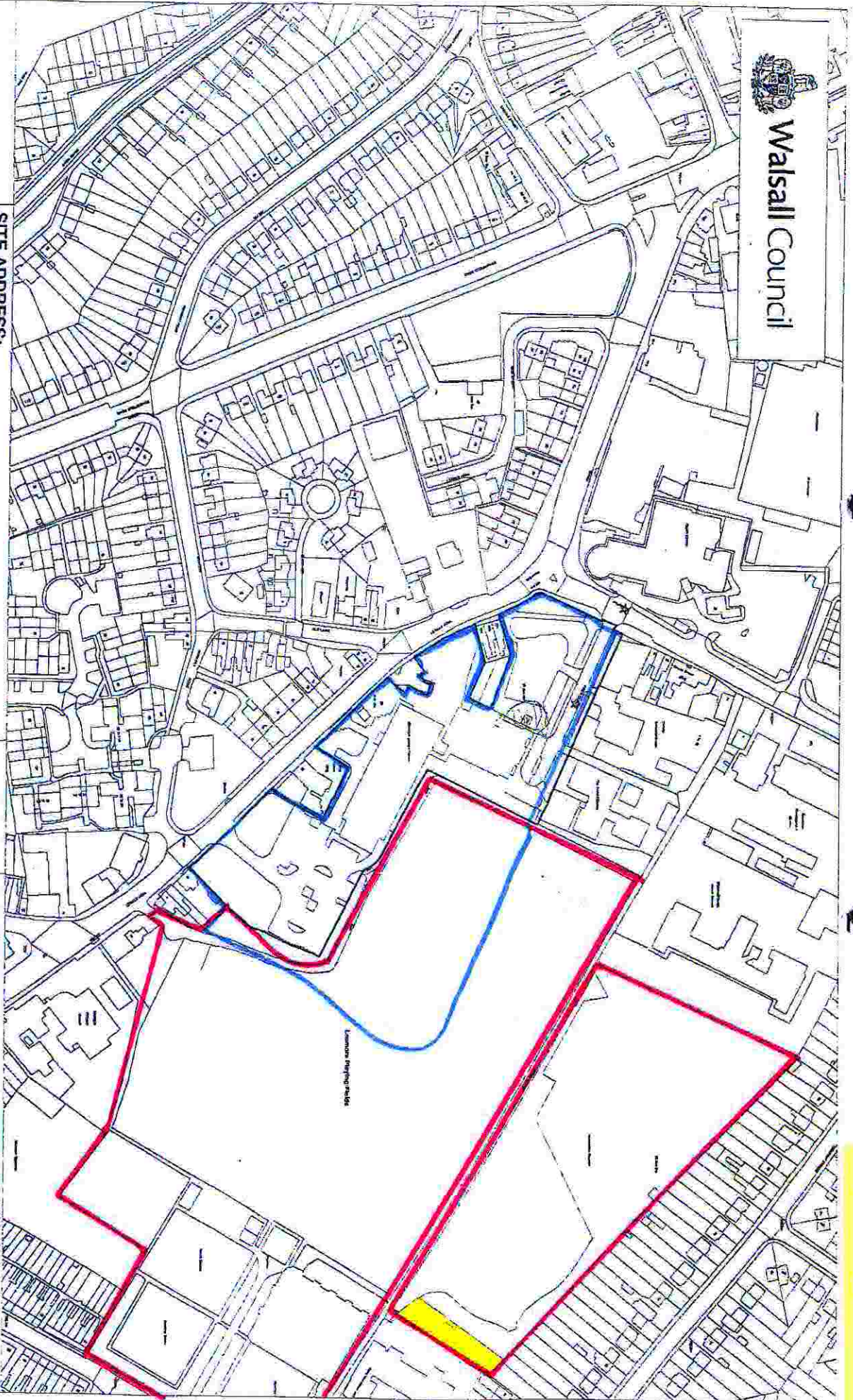
Plan Referred to







Walsall Council



**ASSET MANAGEMENT**

Civic Centre  
Walsall  
WS1 1TP  
Telle: 01922 852094  
Fax: 01922 836150

**SITE ADDRESS:**

**BLOXWICH LEISURE CENTRE  
HIGH STREET, BLOXWICH**

**PLAN NO. EPMS 3685**

**DATE : 30/08/2012**

**DRAWN BY : KCL**



**SCALE 1:2500**

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**ANNEX C**



