

Bloxwich and Leamore Recreation Ground – Sunshine School

Service Areas: Economy and Environment
 Children's Services
 Change and Governance

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. In or around the early 1960s a building was constructed on the trust land to the rear of Sunshine School, for school purposes, and in breach of the Trust Deed. 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.
- 1.5. The Charity Commission is aware of this situation and, as Trustees, the Council is required to remedy the situation.

2. Recommendations

- 2.1. That the Trustee (being 'the Council') authorises the transfer of a portion of the Trust Land to the Council (which parcel is identified on the plan at Annex A) for the purposes of retaining the caretaker's house which has been constructed thereon as part of Sunshine School premises on the basis that *the proceeds of the sale are to be held on an implied trust to support the use of the remaining trust land for the purposes of the charity.*

- 2.2. That the Trustee authorises officers to make application to the Charity Commission for an Order confirming the disposal of the Trust Land to the Council, such sale being a disposal to a connected party;
- 2.3. That the Trustee confirms:
- (a) that it is satisfied the trust land to be sold is not immediately required for the purposes of the charity;
 - (b) that it is satisfied the District Valuer's valuation represents the current market value for the land; and
 - (c) that it is satisfied the proposed sale to the Council for the purposes of Sunshine School is in the best interests of the charity.
- 2.4. That the Trustee acknowledges that it is usual practice for a trustee to advertise land that it intends to sell but that in this case the land is landlocked and surrounded by trust land and other land which is already in the ownership of the Council (and upon which the current Sunshine School stands).
- 2.5. That the Trustee resolves:
- (1) that it is not appropriate in this case to advertise the land for sale on the basis that the compensation being paid for the land represents the District Valuer's valuation; and
 - (2) that the terms of sale are the best that can reasonably be obtained for the charity; and
 - (3) that the purpose of the sale to the Council is to enable the retention of the caretaker's house to Sunshine School.
- 2.6. That the Trustee notes the Plan at Annex A to this report which shows the trust land edged in black.

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 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. A plan showing the trust land

edged in black and the approximate area of trust land used by Sunshine School hatched is **attached at Annex A to this Report**.

- 3.3 In July 2012 Sunshine School obtained Secretary of State consent to commence the process of becoming an Academy. As the land upon which the caretaker's house stands had formed a part of the school for some decades, the Council would be under a statutory obligation to transfer the land (by sale or by lease) to the Academy, pursuant to the Academies Act. As a consequence, a report was brought to Council (sitting as Trustees) in August 2014 and, following that, discussions with the Charity Commission commenced to seek a suitable and agreeable "cy-pres" scheme to enable the removal of this land from the trust and its transfer to the Academy.
- 2.4. The Charity Commission agreed that instead of a new scheme, consent be given for the Trustees to dispose of the land to the school and payment made to the Trust for the value of that land. Trustees may recall that this is also what was agreed in relation to Bloxwich Leisure Centre.
- 2.5. In November 2015 Sunshine School indicated that it no longer wished to become an Academy and will remain, instead, as a maintained school. Whilst there is now no need for the land to be transferred to the school pursuant to the Academies Act, the Trustees remain under a duty to regularise the position in relation to the use of charity land for purposes other than those set out in the trust deed.
- 3.8 **The Charity Commission.** The Charity Commission is a regulatory body responsible for overseeing the conduct of charitable affairs. Trustees will be aware of the recent disposal of land forming part of the Leamore and Bloxwich Recreation Ground to enable the construction of the new leisure centre. Trustees may also 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. A report was submitted to the Trustee in September 2013 following which the Trustee resolved to authorise officers to liaise with the Charity Commission to negotiate a scheme which would enable the trust land to be utilised for the purposes of the school on the basis that the value of the land is either reimbursed to the trust by way of financial compensation, land swap or offset against a scheme of works for the improvement and enhancement of the existing recreation and pleasure grounds. It was further resolved that the details of any scheme negotiated with the Charity Commission be brought back before the Trustee for approval. A copy of the Report of 23 September 2013 is **attached at Annex B to this Report**.
- 3.9 The Charity Commission have since confirmed that a scheme is not required because where a charity Trustee is disposing of only a small part of the charity's designated land and there will be little or no effect on the charity's ability to carry out the purposes for which the remainder of the land is held *and* there is no express prohibition in the trusts of the charity that prevents any type of disposal, the Trustee can proceed with a disposal pursuant to the statutory power in the Trusts of Land and Appointment of Trustee Act 1996 ("TLAT"). This is on the basis that the proceeds of sale are held on implied trust to support the use of the remaining land for the purposes of the charity.

3.10 Where trust land is sold to an independent party, the Trust need only ensure that it complies with its statutory duty (set out in section 119 Charities Act 2011). That is to say that before entering into an agreement for the sale of the land the trustees (a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity, (b) advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and (c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity. In addition, as Walsall Council is the charity trustee and the proposed sale of the land is to the Council as the operator of education services, the Charity Commission will need to make an Order to confirm the sale. An application by officers is therefore proposed if the Trustee resolves to proceed with the sale on the basis that it is in the best interests of the charity; that the land is not immediately required for the trust; and that the value of the land represents market value.

3.11 **Valuation.** Officers have obtained an independent valuation of the land in question by 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 the value of the caretaker's house has to be taken into account, albeit limited to use for the purposes of the school. The Trustee should note that the valuation provided has been given by the District Valuer and represents a valuation independent of either the Council or the Trustee. A copy of the District Valuer's Report is **attached at Annex C to this Report.**

4. Resource considerations

4.1 Financial: There is undoubtedly a financial consideration to be taken into account in the compensation to the trust from the Economy and Environment Directorate.

4.2 Legal: The Charity Commission will need to make an Order to legitimise the transfer of the parcel of land from the Trustee to the Council, as the disposal in this case is to a connected party. The Charity Commission has a number of powers that it could employ in relation to the breach of trustee duties if the Trustee does not act to regularise this position.

4.3 Staffing: Work on this project is being undertaken by officers in Legal, Property 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.

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:** The loss of a part of the trust land is considered to be negligible.

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

- (i) Risk: None
- (ii) Performance Management: None

9. Equality Implications: None.

10. Consultation.

- 10.1 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 Coal Industry Social Welfare Organisation (CISWO) will be included in future discussions where relevant.

List of Annexure:

- A:** Plan showing the trust land edged in black and the approximate area of land used by Sunshine School (and in respect of which a transfer is requested) hatched.
- B:** A copy of the Report to the Trustee dated [*insert date*]
- C:** District Valuer's Report

Author

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Planning Solicitor
For the Head of Legal and Democratic Services

A handwritten signature in black ink, appearing to read 'Anthony Cox', is written over a faint, dotted rectangular grid.

Anthony Cox
Head of Legal and Democratic Services

Dated: 30 March 2016