

Extra-ordinary Council (sitting as Trustee) – 11th August 2014

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 changing 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 also 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.

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 indentified on the plan at Annex A) for the purposes of constructing part of the proposed new Bloxwich leisure centre 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; and that those proceeds of sale be spent upon the repositioning of the football pitches and new children's play area within the trust land.
- 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:

- 2.3.1. that it is satisfied the trust land to be sold is not immediately required for the purposes of the charity;
- 2.3.2. that it is satisfied the District Valuer's valuation represents the current market value for the land; and
- 2.3.3. that it is satisfied the proposed sale to the Council for the purposes of a leisure centre 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 leisure centre stands).

2.5. That the Trustee resolves:

- 2.5.1. 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
- 2.5.2. that the terms of sale are the best that can reasonably be obtained for the charity; and
- 2.5.3. that the purpose of the sale to the Council is to enable the construction of a new leisure centre which will serve to improve leisure facilities within the Borough and enhance the recreation grounds.

2.6. That the Trustee notes the Plan at **Annex A to this Report** which shows the trust land edged in black and the approximate area of land required for Bloxwich Leisure Centre hatched.

3. Background Information.

- 3.1 Walsall Council is manager of the trust land at Bloxwich recreation ground, by virtue of the 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 Trustee, 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 Trustee will be aware that the Council wishes to construct a new and improved leisure centre to serve this part of the Borough thereby assisting in the delivery of its improved health and well-being agenda. A report was

submitted to Trustee in September 2013 following which 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 providing a new leisure centre 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 Trustee for approval. A copy of the Report of September 2013 is **attached at Annex B to this Report**.

- 3.3 The Charity Commission have now confirmed that a scheme is not required because where charity Trustee are 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 an implied trust to support the use of the remaining land for the purposes of the charity. It is recommended that the Trustee resolves to utilise the proceeds of sale to reposition the football pitches on the trust land and to create a new children's play area. Officers consider that this will provide for the better use of the trust land for leisure and recreation purposes, and will enhance the overall experience at the site.
- 3.4 The Charity Commission has further advised that although the governing document of the charity contains a building restriction on the charity's land, the proposal to construct a leisure centre could be considered a similar building necessary or appropriate for its use as a Recreation or Pleasure Ground as provided for in Clause 2 of the charity's governing document. As such, the Charity Commission is content that the construction of the leisure centre could be considered to further the purposes of the trust.
- 3.5 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 leisure 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.

- 3.6 It should be noted 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 Leisure Department. The District Valuer's report places a valuation on the land of £30,000 (in its current open recreational state) or £45,000 (once a leisure centre is built upon it).
- 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.
- 4.3 **Staffing:** Work on this project is being undertaken by officers in Legal, Property and Leisure services as a part of their daily roles.

5. **Citizen Impact:** Throughout the proposed development of the leisure centre, there will be no impact upon the trust land, save for that parcel of trust land which is intended to be transferred to the Council for the purposes of building the leisure centre. During the repositioning of the football pitches, removal of fencing and new children's play area 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:** The loss of a part of the trust land is considered to be negligible. The use of the proceeds of sale to reposition football pitches and create a children's play area are considered to improve the facilities. The existing fencing along the public footpath known as the Slang has already been removed.
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.**
 - 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 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:** Plan showing the trust land edged in black and the approximate area of land required for Bloxwich Leisure Centre (and in respect of which a transfer is requested) hatched.
- B:** A copy of the Report to the Trustee dated September 2013
- C:** District Valuer's Report.

Author

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

Dated: 1st August 2014

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

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N Ford Esq
Valuation Surveyor, Asset Management
Property Services
Walsall Council
Zone 2a, 2nd Floor
Civic Centre
Darwall Street
WALSALL
WS1 1TP

Tel 03000 507471
Fax 03000 507706

Your Reference : NF
Our Reference : OGD 1441761/JRNP
Please ask for : Mr Page

Date : 30 October 2013

IN CONFIDENCE

Dear Mr Ford,

**WALSALL MBC
LAND AT LEAMORE PARK, BLAKENHALL LANE, WALSALL**

I refer to your revised instructions dated 15 October 2013 and to my earlier inspections of the site. I am pleased to report as follows:-

BACKGROUND

Walsall Council is considering the purchase of an area of land in the ownership of a Charitable Trust to form part of the site of a proposed new leisure centre. The land is currently used for public open space and leisure activities.

The Council has requested my opinion of the current market value on 2 separate bases.

**SITUATION AND
DESCRIPTION**

The land is a fairly regularly shaped area at the rear of the current leisure centre. I understand that it has no access to the public highway, other than via other land in separate ownership. The site is, in effect, landlocked.

The land is level and grassed for use as playing fields. It adjoins Council land to the south and west.

The land is shown, for identification purposes only, coloured grey on the attached plan. I am informed that it extends to 0.59 hectares (1.458 acres) or thereabouts. The boundaries have not been checked.

ACCESS

As stated above, the land does not have a frontage to a publically adopted highway and access is via other land in the ownership of the Trust and Council.

TENURE I have assumed that the freehold interest with the benefit of vacant possession is available for the land.

EASEMENTS, RESTRICTIONS, OUTGOINGS AND CHARGES. I have been informed that the land is subject to covenants restricting its use to that of leisure use.

Specifically, there are restrictions preventing the erection of any building (except a pavilion or caretakers house) and the land cannot be used as a site for a fair ground or wake.

A 1921 conveyance also restricts the use to playing fields.

For the purposes of this report I have assumed that the above restrictions will not prevent the use of the land for part of the site of the proposed leisure centre.

I have not been made aware of any other easements, restrictions, outgoing or charges that may adversely affect the land.

PLANNING I have not made inquiries of the Local Planning Authority but I have been informed that planning permission has been granted for the proposed leisure centre use, but that no other development or use would be permitted on the site.

ENVIRONMENT AND CONTAMINATION MATTERS I have not undertaken an environmental survey and am not able to state that the land is free from contamination or noxious weed infestation etc.

However, for the purposes of this report, I have assumed that it is.

SITE STABILITY I understand that the land is situated within an historic mining area, but have assumed, for the purposes of this report, that there are no stability problems affecting the site and that no abnormal costs of development would be incurred.

SERVICES I have assumed that all mains services are available to the boundary of the land.

FENCING I have assumed that the liability for fencing of the land falls to the Council.

PUBLIC FOOTPATHS I have assumed that there are no public footpaths crossing the site.

FLOODING I have assumed that the land does not flood.

VALUATION DATE The date of valuation is the date of this report.

BASIS OF VALUATION

In giving my opinions of value below, I have had regard to the definition of market value contained within the Royal Institution of Chartered Surveyors Valuation Standards (March 2012).

This definition specifically excludes the bid of a purchaser with a special interest in the land.

However, given the restrictions over the land, I am of the opinion that any enhanced bid from an adjoining landowner in this case would be nominal.

OPINIONS OF VALUE

I have been asked to provide my opinion of the current market value of the land on the following bases:-

Valuation A – on the assumption that the land remains as public open space or playing fields.

Valuation B – on the assumption that the land is incorporated into the site of the proposed leisure centre.

I am of the opinion, on the above assumptions, that the open market value of the land is as follows:-

Valuation A - £30,000 (thirty thousand pounds)

Valuation B - £45,000 (forty five thousand pounds).

VALUATION COMMENTARY

In valuing the land for public open space or playground (Valuation A) I have adopted a value of £20,000 per acre. This opinion is derived for knowledge of valuations/sales of other land in the West Midlands designated for use as public open space.

In valuing the site in Valuation B, I have had regard to the fact that a more intensive leisure use would take place on the land and reflected this enhanced use.

TERMS OF ENGAGEMENT

This report should be read in conjunction with my terms of engagement, a copy of which is in your possession.

VAT

My opinions of value above are exclusive of any VAT that may be payable on the transaction.

LIABILITY

This report has been prepared for the express purposes of the Council in considering the potential land acquisition and for an application to the Charities Commission. It should not be relied on by any third party for any purpose whatsoever.

PUBLICATION

This report should not be published in any form without my express permission as to the form and context in which it is to appear.

VALIDITY

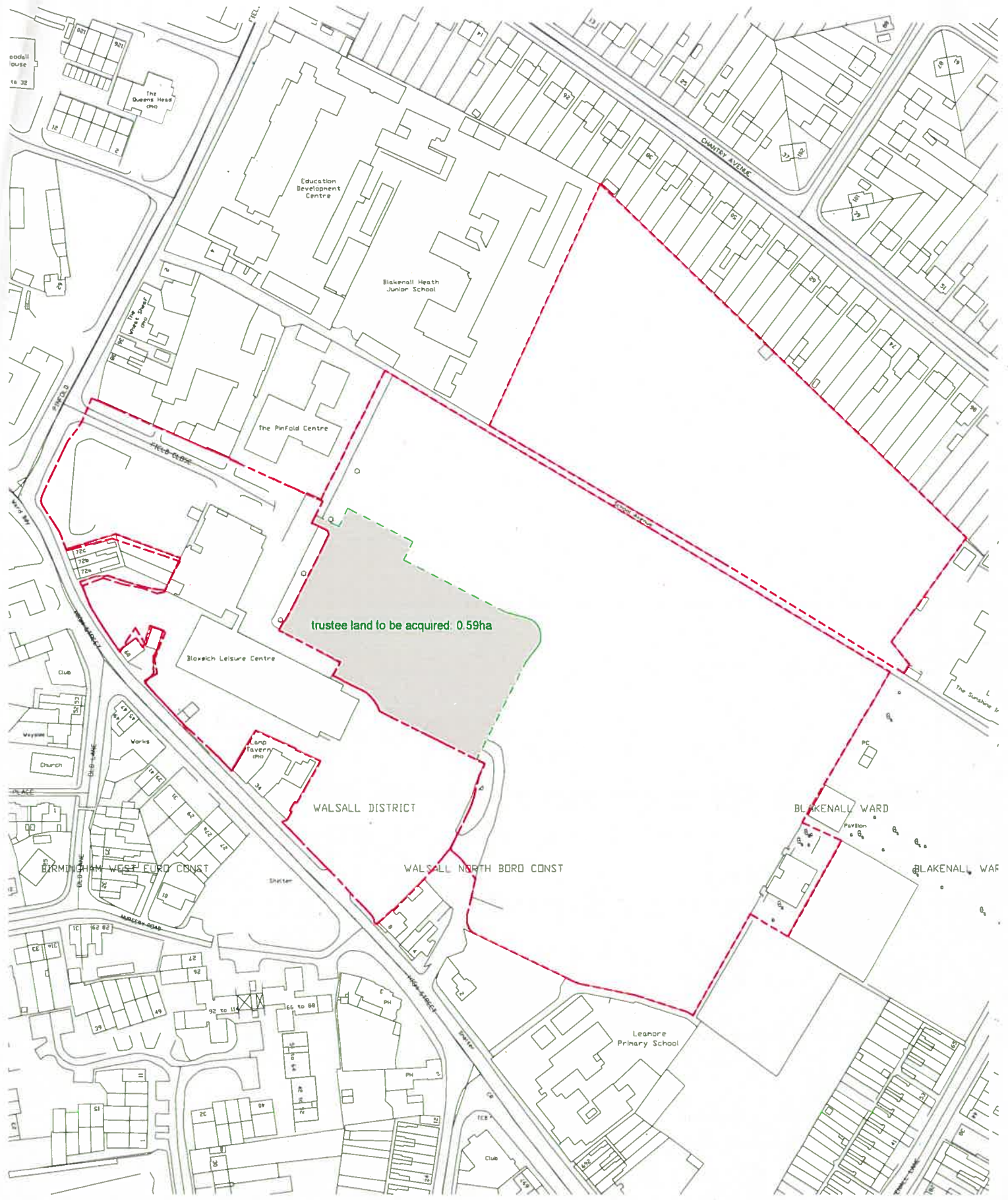
This report should not be considered valid for more than 6 months from the date hereof, nor if the circumstances alter.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J R N Page', with a stylized flourish at the end.

**J R N Page BSc (Est Man) FRICS
RICS Registered Valuer
Principal Valuer & Sector Leader
District Valuer Services**



PLAN ATTACHED TO DVS REPORT
 DATED 30.10.13
 REF OGD 1441761/5247

Slap for DVS