

Council (sitting as Trustee) – 9 November 2009

Cannock Chase and Pelsall District Miners Charity (Oak Park)

Service Area: Legal Services

Wards: Aldridge North and Walsall Wood Ward

1. Summary of report

Walsall Council was appointed Trustee of the Cannock Chase and Pelsall District Miners Charity in 1932. The Trust comprises of a piece of land otherwise known as Oak Park, which comprises of an open recreation ground together with the Oak Park Leisure Centre and Walsall Wood Football Club.

The terms of the Trust were that the Council were responsible for maintaining an open recreational space for the benefit for the inhabitants of the area and in particular, a restriction was placed upon the land preventing any buildings being put on the land. The purpose of this report is to inform the Council of difficulties around the presence of the Walsall Wood Football Club together with the Oak Park Leisure Centre in addition to a disposal of land as occurred in the early 1970s and the Charity Commission decision to exercise its statutory power and order the council to undertake a land swap.

2. Recommendations

- 2.1 Note the Charity commission order and direction that a land swap of the Council land indicated on **plan A** with Charity land marked on **plan B** be undertaken by no later than the 21 May 2010.
- 2.2 That the Trustees authorise the land swap as detailed above in paragraph 2.1.
- 2.3 That the Trustees authorise the Assistant Director of Legal and Constitutional Services to execute the necessary contractual documentation on behalf of the trust.

3. Background information

The Council holds the charity land ("Oak Park") as Trustee. This places the Council in the unique position of being a Trustee of land in its own right albeit only being able to deal with the land in accordance with the terms of the Trust. The duties and responsibilities of the Trustee include acting at all times in the best interests of the Trust. This at times can cause difficulties for local authorities where as a Local Authority its interests may be contrary to the interests of the Trust for which it is Trustee. Historically, the Council has undertaken a number of actions that were generally for the benefit of the community but represented technical non-compliance with the terms of the original Trust. In particular, the

Trust contains a restriction that the Council cannot build on the land, sell it or in any way do something which prevents it from being an open recreation.

3.2 Walsall Wood Football Club

Historically, there has been a football club on Oak Park for many generations. It is unknown as to precisely when the football club took up the site. However, they have previously entered into a lease with the Council for occupancy of the site at a peppercorn rent. The presence of the football club on the site is not in accordance with the terms of the Trust Deed, as detailed above. This means that the Charity Commission have the power to require the Council to move the football club from the site by way of an order from the Charity Commission.

3.3 Oak Park Leisure Centre

The Oak Park Leisure Centre has been on the site since its construction in the 1970s and or 1980s. Again, its presence on the site is not in accordance with the terms of the original Trust Deed and as a consequence, the Charity Commission have the right to insist upon the removal of the leisure centre from the site by way of an order.

3.4 Disposal of land to the Walsall Wood Methodist Church

In the late 1960s, the Council agreed to dispose of a small piece of land adjacent to the Walsall Wood Methodist Church on the Lichfield Road. This land disposal eventually took place in October 1975. Again, the said disposal was in breach of the terms of the originating Trust.

3.5 Charity Commission

The Charity Commission is a regulatory body responsible for overseeing the conduct of charitable affairs. In this case, the Charity Commission has been for sometime in the process of conducting a review nationally of local authorities' actions as Trustees generally and found a number of councils to have lapsed over time in their compliance with the trust deeds that made them Trustees.

The Commission, having considered the historical actions of the Walsall Council in particular permitting the Football club and leisure centre to be on the site and disposal of the small piece of land to the church considered the council to be in breach of the terms of the original Trust.

Considerable efforts have been made by Council Officers to resolve the difficulties and satisfy the Commission with regard to the Councils management of the trust. The Commission after having entered into discussions as to what potential enforcement action it may wish to undertake against the Council for breaches of the originating Trust is now satisfied with regard to the proposed resolution of the difficulties. It has used its statutory powers to make an order and direct the exchange of the Council land and charity land. In effect a swap of land in the same locality of equal value and size. The Commission came to the conclusion to use its powers in this way, after extensive efforts by Council officers, as it represented the most effective means of dealing with the situation. In the alternative the Commission could have used its statutory powers and

ordered that both the football club and Leisure centre be demolished. However, the Commission recognised and accepted Council officers representations that these community facilities offered genuine contribution to the area. It therefore ordered that the land immediately adjacent to the Oak Park, being land already used by the Council as a part of the park, albeit land that was not part of the Trust, be transferred to the Trust in return for the land that the football club and leisure centre are built upon being transferred to the council.

3.6 Charity Commission Order – its impact

The effect of the order is neither party suffers a detriment, the land in question is very similar in size and in the same location. Further as part of the process of the land transfer being considered, the Commission required the land to be independently valued. This valuation placed both parcels of land due to their similar size and locality as being the same in total value. The Council land being valued at £76,000 and Trust land being valued at £76,000. The Commission does not consider the Charity to in any way be disadvantaged by the land exchange otherwise it would not have ordered it, and from the Councils perspective the Council acquires land of a similar value in addition it is able to keep a leisure centre and community football club in the area.

4. Resource considerations

4.1 Financial:

4.2 **Legal:** The Charity Commission have a number of powers that it could use against the council, however it has decided to use its powers in the least negative impact manner but in the most effective manner it could have and order the land exchange.

4.3 **Staffing:** None

5. **Citizen impact:** Valuable community facilities remain open for use by the public.

6. **Community safety:** None

7. **Environmental impact:** None

8. Performance and risk management issues

8.1 **Risk:** None

8.2 **Performance management:** None

9. **Equality implications:** None

10. Consultation

As part of the Charity Commission process for considering exercising its powers, it is duty bound to undertake consultation of interested parties. The Commission have done this.

Background papers

Deed of trust 15 July 1932

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Rory Borealis

Executive Director

30 October 2009

AREA EDGED RED = 30,980 SQ METRES (0.1)

Plan A

Walsall Council

Council owned land
- marked by chevrons

REVISION AND AMEND
BANKING

Chris Carter
Survey
0191 517
Fax 0191 517 517
Fax 0191 517 517

SITE ADDRESS:
LICHFIELD ROAD
BLAU SALL WOOD

DRAWING NO. : EPMS 3176
DATE : 20/09/2008
DRAWN BY : GGP



SCALE
1:500

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