

CHARITABLE TRUST COMMITTEE
Agenda

Date Monday 26 November 2018

Time 6.00 pm

Venue Shaw Room, Civic Centre, Oldham, West Street, Oldham, OL1 1NL

- Notes
1. DECLARATIONS OF INTEREST- If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact Paul Entwistle or Lori Hughes in advance of the meeting.
 2. CONTACT OFFICER for this Agenda is Lori Hughes Tel. 0161 770 5151 or email lori.hughes@oldham.gov.uk
 3. PUBLIC QUESTIONS – Any member of the public wishing to ask a question at the above meeting can do so only if a written copy of the question is submitted to the Contact officer by 12 Noon on Wednesday, 21 November 2018.
 4. FILMING - The Council, members of the public and the press may record / film / photograph or broadcast this meeting when the public and the press are not lawfully excluded. Any member of the public who attends a meeting and objects to being filmed should advise the Constitutional Services Officer who will instruct that they are not included in the filming.

Please note that anyone using recording equipment both audio and visual will not be permitted to leave the equipment in the room where a private meeting is held.

Recording and reporting the Council's meetings is subject to the law including the law of defamation, the Human Rights Act, the Data Protection Act and the law on public order offences.

MEMBERSHIP OF THE CHARITABLE TRUST COMMITTEE IS AS FOLLOWS:

Councillors Turner, Davis (Substitute), Goodwin (Substitute), Harrison (Substitute), Brownridge (Chair), F Hussain and Moores

Item No

- 1 Apologies For Absence
- 2 Urgent Business

Urgent business, if any, introduced by the Chair

3 **Declarations of Interest**

To Receive Declarations of Interest in any Contract or matter to be discussed at the meeting.

4 **Public Question Time**

To receive Questions from the Public, in accordance with the Council's Constitution.

5 **Minutes of Previous Meeting (Pages 1 - 4)**

The Minutes of the Charitable Trust Committee meeting held on 5th September 2018 are attached for approval.

6 **Former DSO Building, Adjoining Land and Public Convenience Block, High Crompton Park, Rochdale Road, Shaw (Pages 5 - 14)**

7 **Land at Shaw Road End Park, Broadway, Royton (Pages 15 - 50)**

8 **William Hague Trust - Update on the Sale of the Hollies, Frederick Street, Werneth (Pages 51 - 56)**

9 **146 Werneth Hall Road, Werneth (Pages 57 - 70)**

CHARITABLE TRUST COMMITTEE
05/09/2018 at 6.30 pm



Oldham
Council

Present: Councillors Turner, Davis (Substitute), Brownridge and Moores

Also in Attendance:

Elizabeth Cunningham-Doyle	Legal Services
Ben Hill	Strategic Regeneration
Lori Hughes	Constitutional Services
Zaiem Khan	District Co-ordinator
Keith Moss	Unity Partnership
Mark Prestwich	Strategic Regeneration
Rebecca Boyle	Group Solicitor (Corporate)

1 **ELECTION OF CHAIR**

RESOLVED that Councillor Brownridge be elected Chair of the Charitable Trust Committee for the duration of the Municipal Year 2018/19.

2 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Brock and Councillor F. Hussain.

3 **URGENT BUSINESS**

There were no items of urgent business received.

4 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

5 **PUBLIC QUESTION TIME**

There were no public questions received.

6 **MINUTES OF PREVIOUS MEETING**

RESOLVED that the minutes of the Charitable Trust Committee meeting held on 19th September 2017 be noted.

7 **CLAYTON PLAYING FIELDS - ANNUAL REPORT FOR THE YEAR ENDED 31ST MARCH 2018**

The Committee gave consideration to the accounts of the Clayton Playing Fields Trust for the year ended 31st March 2018

The Charity Commission required all charities to hold an annual general meeting and approve the latest year's financial statements at the meeting. It is a requirement to send the annual return to the Charity Commission with the main financial details.

Options Considered

1. To approve the accounts as set out at Appendix A of the report and make the appropriate annual submission to the Charity Commission by 31st January 2019.

2. To not approve the accounts as set out in Appendix A of the report. This would mean that the Trust would not be able to make a resolution at their Annual General Meeting and comply with the financial requirements of the Charity Commission.

RESOLVED that Clayton Playing Fields Trust Accounts for the year ended 31st March 2018 be approved.

8

LAND AT SHAW ROAD END CAR PARK, BROADWAY ROYTON

The Committee gave consideration to a report which provide an overview in respect of an area of land known as Shaw Road End Park which had been acquired by the Council subject to Trusts requiring it to be used for the purposes of exercise and recreation ('Charity Land').

The background to the site and the future proposals for the site were outlined in the report.

Members were informed that most of the land had been set out as a park since 1934 but that the trust had not been registered with the Charity Commission. Members sought and received clarification on the land outlined in green which was confirmed as being part of the charitable trust which would be formalised. Members were also informed that the Council would need permission from the Charity Commission for the land swap.

Options Considered

1. The Committee could choose to do nothing and not proceed with the Land Swap. In proceeding with this approach, the Charitable Trust would continue to own the area outlined in pink as outlined in the report and the Council (in its statutory capacity) would continue to own the area outlined in Green. As indicated at Section 1 of the report, the current use of the area outlined in pink as an area of informal car parking, would be considered to be a breach of the charitable trust (to use the land for the purposes of exercise and recreation) and therefore, in doing nothing, the current arrangements would continue to breach the charitable trust objectives.
2. The Committee could choose to obtain independent advice from a surveyor acting on behalf of the Charitable Trust. The advice would have to be compliant with the Charities (Qualified Surveyors' Reports) Regulations 1992 and would determine whether it would be more advantageous to market the land outlined in pink in the report. The cost of the advice would be borne by the Council.

RESOLVED that:

1. The background in respect of the acquisition of the land shown edged red and edged blue at outlined at Appendix 1 of the report that formed the Charity Land be noted.
2. Council officers be authorised to take steps for the arrangements for the charitable trusts affecting Charity Land be registered with the Charity Commission.
3. The request from the Council to enter into an agreement for the Land Swap with the Charitable Trust involving the land shown coloured in pink on the Plan which was part of the Charity Land be noted.
4. Stannybrook Property Consultants be appointed as the independent chartered surveyor in order to prepare valuations of the Charity Land, together with the area of land owned by the Council in its statutory capacity being shown edged green on the Plan ("Green Land"). The valuation reports were to be prepared in accordance with the Charities (Qualified Surveyors' Reports) Regulations 1992.
5. The proposal to proceed with the Land Swap involving the exchanging the "Pink Land" and the "Green Land" be advertised in accordance with the consultation strategy detailed in Section 4.2 of the report.
6. A further report be prepared for the Charitable Trust Committee when the independent surveyor's report had been received and the public consultation completed.

9 **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED that, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they contain exempt information under paragraph 3 of Part 1 of Schedule 12A of the Act, and it would not, on balance, be in the public interest to disclose the reports.

10 **WILLIAM HAGUE TRUST - PROPOSED SALE OF THE HOLLIES, FREDERICK STREET, OLDHAM**

The Committee gave consideration to a report which sought approval for the sale of the "The Hollies", Frederick Street, Werneth.

The Hollies was a former Day Care Centre and had a gross site area of some 3.20 acres. The centre was vacated in 2005 and had suffered extensive vandalism. The premises were subject to a Trust (William Taylor Hague bequest) and Oldham Council was the Charitable Trustee.

Options Considered

1. To approve the bid of the highest value for the site.
2. To approve the second highest bid.

3. To re-market the site.

RESOLVED that the recommendation as set out in the within the commercially sensitive report be approved subject to public consultation.



11

146 WERNETH HALL ROAD

The Committee gave consideration to a report which proved an update on the communications with the Charity Commission related to 146 Werneth Hall Road.

RESOLVED that:

1. An informal approach be made to the Charity Commission as per the recommendation as set out within the commercially sensitive report be approved.
2. Upon confirmation from the Charity Commission of the approach to be taken forward, the course of actions as set out in the commercially sensitive report be approved following public consultation.

The meeting started at 6.30 pm and ended at 6.46 pm



REPORT TO CHARITABLE TRUST COMMITTEE

FORMER DSO BUILDING, ADJOINING LAND & PUBLIC CONVENIENCE BLOCK. HIGH CROMPTON PARK, ROCHDALE ROAD, SHAW.

**Nikolaj Dockree, Senior Consultant Surveyor, Unity Partnership
Ex.4146**

26th November 2018

Reason for Decision

The purpose of the report is to:

- Provide the Charitable Trust Committee with an overview in respect to an area of land and a building known as the Former DSO building.
- Provide Members of the Charitable Trust Committee with details of a recent request from Oldham Borough Council (“the Council”) to enter into a land swap agreement with the Council whereby part of the Charity Land would be exchanged with other land owned by the Council which is not covered by the charitable trusts (“Land Swap”).
- Seek approval to instruct an independent Surveyor to act on behalf of the Charitable Trust Committee and prepare a valuation in accordance with the Charities (Qualified Surveyors’ Reports) Regulations 1992.
- Seek approval to advertise the proposal to proceed with the Land Swap and invite public feedback.

Recommendations

It is recommended that the Charitable Trust Committee:

- Notes the background in respect to the acquisition of the land shown edged red on the attached plan (see Appendix One), that forming which is the “Charity Land”.
- Notes the request from the Council to enter into an agreement for the Land Swap with the Charitable Trust involving the land shown edged blue on the Plan (“Blue Land”) which is part of the Charity Land.

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- Appoints an independent chartered surveyor in order to prepare valuations of the Charity Land, together with the area of land owned by the Council in its statutory capacity being shown edged green on the plan (“Green Land”). The valuation reports will be prepared in accordance with the Charities (Qualified Surveyors’ Reports) Regulations 1992.
 - Advertises the proposal to proceed with the Land Swap involving exchanging the Blue Land with the Green Land in accordance with the statutory consultation strategy detailed in Section 4.2 of the report.
 - Requests that a further report is prepared for consideration by the Charitable Trust Committee once the independent surveyor’s report has been received and the public consultation completed.
 - Grants a licence to the developer to enter onto the Charity Land to undertake the essential works to the former DSO building.

Land at High Crompton Park – (The former DSO Building)

1. Background

- 1.1. The former DSO Building is situated on the Charity Land blue on the plan appended to this report (Appendix 1) has been part of various marketing campaigns since 2014 with only very limited interest which did not convert into a deliverable deal.
- 1.2. Officers have now undertaken a fresh marketing exercise and tenders were received on the 19th February 2018. A single tender was received from a joint bid by a local developer and a local restaurant owner to refurbish the building and create a Café Eatery.
- 1.3. The Parks Service currently use the ground floor space in the DSO Building for the storage of equipment and materials, but this could possibly be relocated to the nearby compound though the use of metal containers has previously attracted a number of complaints from residents on Park Cottages.
- 1.4. Despite the application of anti-climb paint and warning notices affixed to the existing public convenience block, Park Service advises that it is regularly used by children as a staging point to access the main roof of the DSO Building, who then dislodge slates and throw them onto the surrounding walk-ways and bowling green. Officers are aware of a hole in the roof of the DSO Building, but its' unsafe condition means this is not readily reparable at low cost. A contractor has advised that a structural report is required and also scaffolding to be erected prior to carrying out any repair works. Unity Partnership has estimated the total cost to be in the region of £12k. Additional measures are however to be put in place to prevent the continued unauthorised access. It is understood the Police are aware of the problems of anti-social behaviour.
- 1.5. Re-provision of the public conveniences within the DSO building would present an opportunity to prevent such anti-social behavior from continuing as well as drastically reducing the health & safety and insurance risks associated with such activity.
- 1.6. Since the sale of the building was approved the building has continued to deteriorate and the developer has confirmed they would need to halt this if they are to stand by the offer and business plan they submitted. As such they have requested earlier access under licence to undertake essential works and understand this is entirely at their own risk and cost. This would allow roofing work and pointing work to commence and in the process eliminate an ongoing and growing public risk from falling masonry and tiles. It should be noted that careful drafting of the licence allowing such entry is required to maximise the chance of avoiding the Council becoming bound by the legal concept of "estoppel" to proceed with the grant of a lease to the developer, should say the Charity Commission refuse to grant an order allowing the Land Swap.

2. Current Position

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- 2.1. Oldham Council (in its statutory capacity) owns sections of the Park, as shown on the plan in Appendix 2 and since the latest tender exercise was completed it has come to light that part of the Blue Land which is part of the area being offered for sale by the grant of a 250 year lease, is Charitable Trust land. The remaining area of the proposed area to be leased is owned by Oldham Council.
 - 2.2. The remainder of the Charity Land within High Crompton Park would be unaffected by the proposal.
 - 2.3. Rather than making a financial payment to the Charitable Trust, the Council (in its statutory capacity) would like to enter into a land swap arrangement whereby, it would swap the Blue Land for the Green Land which, whilst forming part of the current park area, is not subject to the Charitable Trust.
 - 2.4. As such, the offer is one whereby, the Trust would swap the Blue Land, (measuring 320 sq.m or thereabouts), for the Green Land (measuring 566 sq.m or thereabouts).

3 **Options/Alternatives**

- 3.1 There would be a number of options available and these can be summarised as follows:

Option 1 - Do Nothing

- 3.2 The Trust could choose to do nothing and not proceed with the Land Swap.
- 3.3 This option would retain the risks of a dilapidated building on the Charitable Trust Land and the liabilities therein. As such this option is not recommended.

Option 2 - Obtain independent surveyor's advice, with a view to progressing a sale

- 3.5 Alternatively, the Charitable Trust could choose to obtain independent valuation advice, from a surveyor acting on behalf of the Charitable Trust. The advice would have to be compliant with the Charities (Qualified Surveyors' Reports) Regulations 1992 and would determine whether it would be in the interest of the Charitable Trust to proceed with the Land Swap on the basis that the value of the Council Land is equal to or in excess of the Charitable Trust land.
- 3.6 The cost of the advice provided to the Charitable Trust would be borne by the Council and three local surveyors have been approached to provide a report of this matter. The parties and cost of the advice can be summarised as follows;

Breakey Nuttall - £795.00
Ryder & Dutton - £800.00
Stannybrook Property Consultants - £750.00

- 3.7 In parallel with the above, enter into a licence with the developer to allow them to undertake essential maintenance work. It is noted that this work will be undertaken at the developer's own risk and cost.

4 **Preferred Option**

- 4.1 Option 2 is recommended as this will facilitate the refurbishment of a dangerous and dilapidated building presently on the Charity Land. The value of the land with the dilapidated former DSO Building is the Blue Land is expected to be less than or equal to the value of the Green Land so the Trust will simply benefit from the removal of the risks

of being adjacent to the dilapidated DSO Building whilst their land holding and the value of this will be maintained, if not enhanced.

4.3 Prior to making any decision, the results of the surveyors report, together with the feedback received following the statutory public consultation exercise under section 121(2) Charities Act 2011 could then be considered by the Charitable Trust Committee at a further meeting. The Consultation would be in the name of the Council acting in its capacity as a charitable trustee and not in its capacity as the Council as a statutory body.

4.4 Officers recommend entering into the licence with the developer to allow the developer to park vehicles equipment and materials on the Blue Land in connection with undertaking the essential works on the former DSO building to the extent that it is situated on the Blue Land

5 **Consultation and Charity Commission Order**

5.1 No public consultation has been carried out to date and the report is recommending that details of the proposals are shared with members of the public by means of a formal notice published in a newspaper circulating in the area under section 121(2) Charities Act 2011, as part of a formal public consultation process, prior to formalising a decision on whether to do nothing or swap the Blue Land with the Green Land.

6 **Financial Implications**

Revenue Comments

6.1 The purpose of this report is to engage with Trust Committee with the proposal of a land swap.

6.2 The Council does not hold revenue budgets for the asset and is not currently incurring expenditure on the asset. The asset is maintained by Environmental Services and will continue to do so after the land swap and up until future disposal.

6.3 Any disposal costs will initially be funded by Oldham Council, but a further report will be needed on the full disposal of the site.

[Jamie Kelly – Accountant]

Capital Comments

6.4 There are no capital financial implications for the proposed transaction. However there will be a change to the asset in relation to categorisation, from 100% land and buildings to be part land and buildings and part infrastructure asset.

[Jit Kara]

7 **Legal Services Comments**

7.1 The Council acting in its capacity as a charitable trustee is advised to follow the guidance published by the Charity Commission in seeking to dispose of charity land. The proposal outlined in the body of the report to seek an independent valuation of both of the sites to be exchanged follows the recommendation in the guidance. However, following receipt of the independent valuations, and the statutory consultation process conducted under Section 121 (2) Charities Act 2011, the Charitable Trustee Committee will need to meet to consider the outcome of the valuation and the consultation process and if they decide to proceed request an order from the Charity Commission for the disposal of the charitable land. This is because the Council owns both the Blue Land and the Green Land (albeit in different capacities) which are the subject of the proposed land swap and as such the Council would be making a disposal to a connected person.

7.2 The Trustees would be advised to permit access to the former DSO premises to carry out the essential repairs. The grant of a licence would be the best option to afford such access and mitigate any outstanding liability arising from the poor state of the building.

[Elizabeth Cunningham Doyle]

8. **Co-operative Agenda**

8.1 None.

9 **IT Implications**

9.1 None.

10 **Property Implications**

10.1 All Property implications are covered in this report. [Roslayn Smith]

11 **Environmental and Health & Safety Implications**

11.1 None.

12 **Equality, community cohesion and crime implications**

12.1 None.

13 **Equality Impact Assessment Completed?**

14.1 No.

14 **Key Decision**

14.1 No.

15 **Key Decision Reference**

15.1 Not applicable.

16 **Background Papers**

16.1 None.

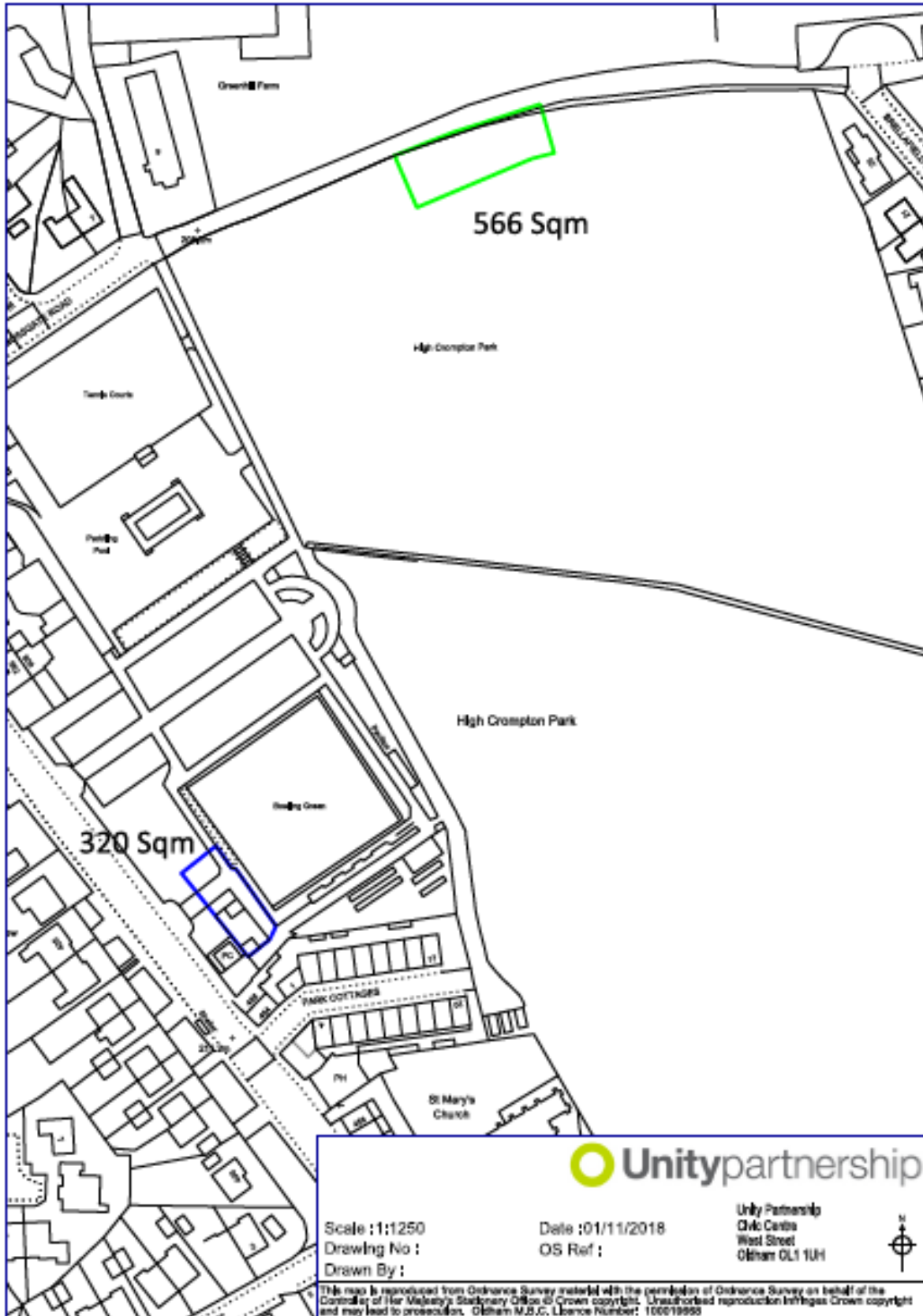
17 **Appendices**

17.1 Appendix One – Plan

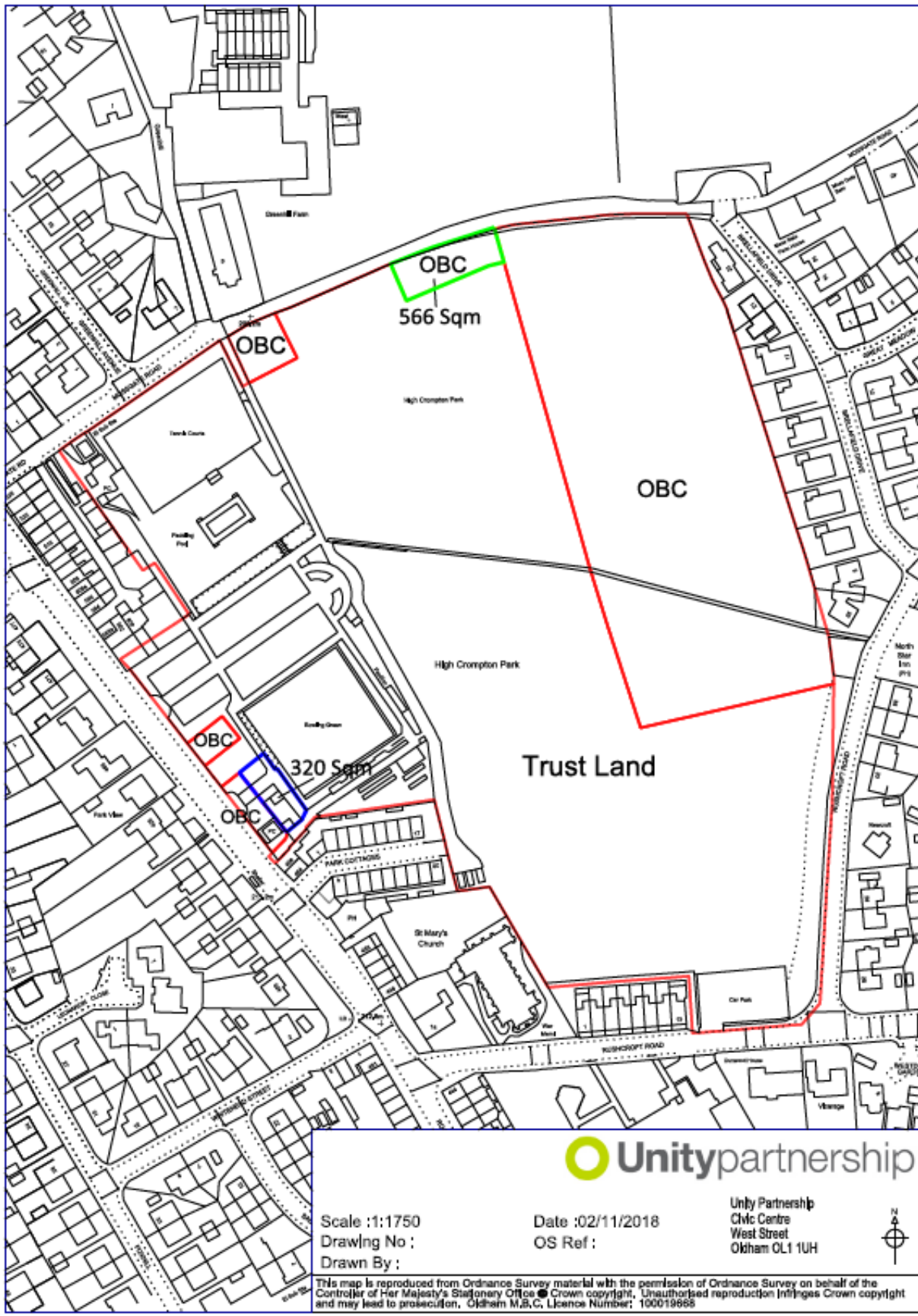
Appendix Two – Land Ownership – High Crompton Park

Appendix Three – Site Photographs

Appendix One



Appendix Two



Appendix Three





Report to CHARITABLE TRUST COMMITTEE

Land at Shaw Road End Park, Broadway, Royton [Royton South]

Report Author: Mark Prestwich, Principal Development Surveyor
Ext. 1660

26 November 2018

Reason for Decision

The purpose of the report is to;

- Provide the Charitable Trust Committee with an update of activities following the previous meeting in September 2018, including the result of the consultation and the independent valuation prepared on behalf of the Charity;
- Seek feedback on whether, when noting the results of the consultation and independent valuation advice, the Trust Committee is now prepared to provide authority for officers to proceed with the proposed land swap.

Recommendations

It is recommended that the Charitable Trust Committee;

- Notes the position in relation to the formal registration of the charity with the Charity Commission;
- Considers and notes the response received by officers following the recently completed consultation exercise into the land swap proposals.
- Considers and notes the contents of the independent valuation prepared in accordance with the Charities (Qualified Surveyors' Reports) Regulations 1992 in respect to the areas of land due for possible inclusion within any land swap proposals.
- Authorises Council officers to take steps to complete the land swap.

Land at Shaw Road End Park, Broadway, Royton [Royton South]

1 Background

- 1.1 On 5 September 2018, the Charitable Trust Committee met to discuss emerging proposals relating to Shaw Road End Park, part of which was deemed to be held within a charitable trust. When noting the background to the site, the Trust Committee resolved to;
- i. Take steps to arrange for the charitable trust affecting the Charity Land (as shown edged red, shaded pink ('The Pink Land') and edged blue in Appendix One), to be registered with the Charity Commission.
 - ii. Appoint Stannybrook Property Consultants to prepare a valuation report in accordance with the Charities (Qualified Surveyors' Report) Regulations 1992 in respect to the Pink Land and the area of land owned and offered in exchange by the Council (in its statutory, non-trust capacity) as shown edged green ('the Green Land').
 - iii. Carry out a consultation exercise with a view to receiving public feedback on the proposal for the Trust to 'swap' the Pink Land for the Green Land owned by the Council (in its statutory, non-trust capacity).

2 Current Position

Registration of Charity

- 2.1 Following the resolution on 5 September 2018, legal officers have taken steps to formally register the subject charity with the Charity Commission. However, upon investigating the matter further with the Charity Commission, it was noted that the registration of charities with either no, or limited income has changed since the Council registered the land at Lower Memorial Park, Failsworth in late 2009 / early 2010. Guidance from the Charity Commission advises that;

"If your charity is based in England and Wales...you don't have to apply to register it if its annual income is less than £5,000.....You can apply to the commission to register this sort of charity voluntarily but the commission will only consider applications in exceptional circumstances. For example, if you can prove that your charity has been offered significant funds but has to provide a registered charity number before it can receive the funds."

- 2.2 Given the fact that the charity which controls Shaw Road End Park does not generate an income or there are no 'exceptional circumstances' which would mean that the charity needs to be registered at the Charity Commission, it is thought that any application for registration would be automatically rejected. As such, unless the regulations and guidance for the registration of new charities is relaxed by the Charity Commission in future years, it is likely that the existing, unregistered state of the charity would have to continue.

Valuation

- 2.3 In respect to the valuation report, Stannybrook Property Consultants have provided a valuation report in compliance with the Charities (Qualified Surveyors Reports) Regulations 1992. Whilst a copy of the report is included in Appendix Two, in summary, the report concludes that, if the charity is minded to dispose of the subject area of land (i.e. the Pink Land), it would be in the interests of the charity to dispose of it to the Council (in its statutory capacity) who own the adjoining land and that, in the absence of any

interest from the Council, alternative interest would be limited, owing to the fact that the Pink Land is otherwise landlocked.

- 2.4 The report also suggests that, the Market Value of the Pink Land would be £50,000 (fifty thousand pounds) and that the Market Value of the Green Land would be £55,000 (fifty five thousand pounds). Therefore, in proceeding with the land swap (i.e. the Council acquiring the Pink Land and the charity acquiring the Green Land) there would be a difference in value (i.e. £5,000), in favour of the charity.

Consultation

- 2.5 The initial report considered by the Charitable Trust Committee confirmed that the proposed land swap would be advertised, with members of the public invited to feedback on the proposals as part of a consultation exercise. As such, on 10 September 2018, two site notices were erected on the site, inviting feedback on the proposals, with members of the public asked to provide any responses prior to 12 October 2018. The site notices were maintained during this four week period.
- 2.6 In addition, a public notice was inserted in the Manchester Evening News on 14 September 2018. The press notice resulted in one enquiry being received - from the Oldham Ramblers Association - who simply wanted to receive further information and did not object to the proposals once furnished with the relevant, additional information.
- 2.7 Following expiry of the public consultation period, officers were contacted by Local Ward Councillor, Steve Bashforth who had been approached by concerned groups of Royton constituents. It is understood that Councillor Bashforth has met with many of these groups and, as a result, has made a written representation – a copy of which is outlined in Appendix Three.
- 2.8 In addition to the representation received from Councillor Bashforth, officers are also aware of the matter being discussed on local forums and social media (see <http://www.iloveroyton.com/forum/viewtopic.php?id=29749> for further details) – again following expiry of the formal consultation period. An overview of the concerns is highlighted;
- Some residents have suggested that, as the land was acquired by the Council to hold on trust, the proposed land swap should not be considered and the charity should look to remove the car park from the Pink Land and reinstate the area to provide a space for exercise and recreation in accordance with the original acquisition. In proceeding with this option, the charity would need to identify funds in order to reinstate the land to its original condition. In addition, as the Green Land is not held in trust, the future of this area – especially given the redevelopment proposals for the adjoining land – would not be secure. As the Green Land includes the multi-use games area and part of the play equipment, the acquisition of this area by the Trust, would introduce one of the most heavily used areas of the park into the formal trust. By entering into the land swap, any breach of the original trust – by the Pink Land being used as car parking (and therefore not exercise and recreation) - would be remedied, insofar that it would no longer be Trust land.
 - Some resident feedback has also suggested that the proposal is not a fair swap, insofar that the Council (in its statutory capacity) would never sell or allow the Green Land to be used for alternative purposes. Obviously, the Trust cannot comment on whether the Council (in its statutory capacity, and therefore as a third party to the Trust) would or would not ever look to sell the Green Land for alternative uses. However, the Trust can point to examples of where park space has been sold or leased and the introduction of the Green Land into the Trust would safeguard the future of the land.

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- Due to misinterpretation of the original report considered by the Trust Committee in September 2018, there are some residents who are of the opinion that the Trust is looking to sell part of the formal park area (i.e. the areas where the play equipment is situated for example). Clearly, the proposal is one whereby, the Trust are looking to exchange the Pink Land – which has previously been used as a car park and access to the now demolished Our Lady’s School since c.1969 – for the Green Land which, most members of the public would consider to form an active part of the park. As stated previously, whilst the status of the Pink Land would change – i.e. it would no longer be held in Trust, the likelihood is that the use of the land would not change significantly and would continue to form a tarmac area of hard standing, providing access to adjoining, former School land.

3 **Options/Alternatives**

3.1 There would be a number of options available and these can be summarised as follows;

Option 1 - Do Nothing

3.2 The Trust could choose to do nothing and not proceed with the swap. In proceeding with this approach, the status quo would continue. In the event that there is a complaint made to the Charity Commission regarding the use of the Pink Land (i.e. as a car park and therefore, not a space for exercise and recreation) and this is upheld then, in proceeding with this approach, there is a risk that the Trust may have to find the money to reinstate the original use of the land.

Option 2 – Accept the contents of the independent surveyors report that, it is in the financial interests of the Trust to proceed with the swap

3.3 Alternatively, the Charitable Trust could choose to accept the advice contained in the independent surveyor’s report that, it would be in the financial interest of the Trust to proceed with the swap. In proceeding with the swap, any breach of the original covenant in respect to the Pink Land – to use the area for exercise and recreation – would be rectified.

4 **Preferred Option**

4.1 It is considered to be in the interest of the Trust to proceed with the swap – whereby the Trust will dispose of the Pink Land and acquire the Green Land from the Council (in its statutory capacity).

4.2 The continued use of the Green Land – which forms an active part of the former Shaw Road End Park – would therefore be safeguarded.

5 **Consultation**

5.1 The consultation carried out is set out in Section 2.5 - 2.8 of the report. In addition, the initial report considered by the Charitable Trust Committee in September 2018 was an open report and therefore, was available for public inspection.

6 **Financial Implications**

Revenue Comments

6.1 The purpose of this report is to engage with Trust Committee with the proposal of a land swap.

6.2 The Council has does not hold revenue budgets for the asset and is not currently incurring expenditure on the asset. The asset is maintained by Environmental Services and will continue to do so after the land swap and up until future disposal.

6.3 Any disposal costs will initially be funded by Oldham Council, but a further report will be needed on the full disposal of the site.

[Jamie Kelly – Accountant]

Capital Comments

6.4 There are no capital financial implications for the proposed transaction. However there will be an impact to the Asset Register.

[Jit Kara]

7 Legal Services Comments

7.1 When Members are acting in their capacity as charitable trustees they have a duty to act in the best interests of the charity. The Charity Commission has issued some specific guidance for guidance which should be followed:

“...Act in your charity’s best interests you must:

- do what will best enable the charity to carry out its purposes, both now and in the future
- make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests
- not receive any benefit from the charity unless it’s properly authorised and is clearly in the charity’s interests.”

7.2 When making decisions the trustees must:

- “act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors
- ignore any irrelevant factors
- deal with conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstance”

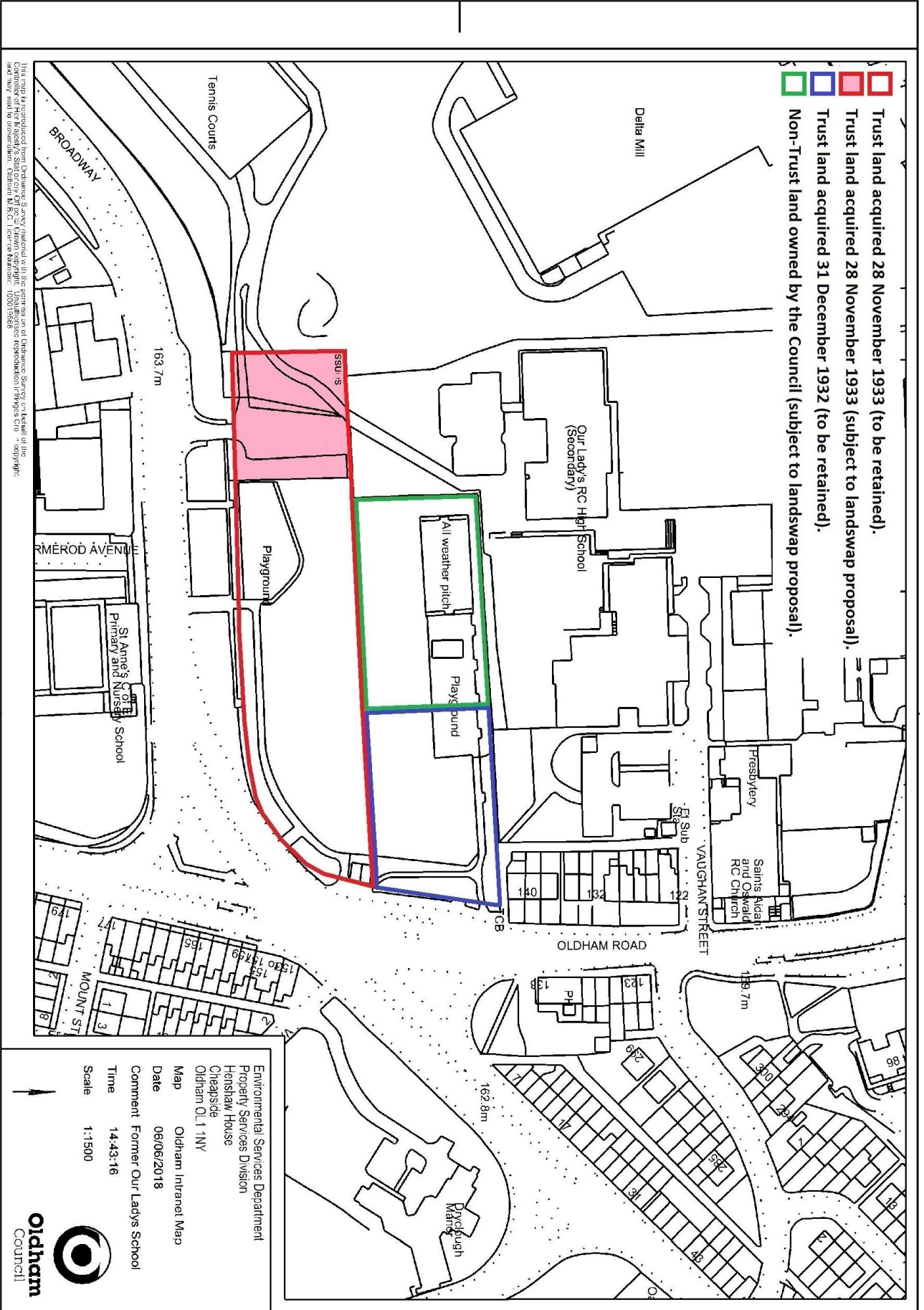
7.3 Under section 121(2) Charities Act 2011:

“The land must not be conveyed, transferred, leased or otherwise disposed of unless the charity trustees have before the relevant time –

- (a) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice which must not be less than one month from the date of the notice, and;
- (b) taken into consideration any representations made to them within that time about the proposed disposition.”

7.4 The Members are required to take full consideration of all of the representations which have been made in response to the statutory notices and make a fully reasoned decision taking into consideration all of the points which have been made by members of the public via the social media link which has been provided.

-
- 7.5 Councillor Bashforth is acting solely in his capacity as a spokesperson for the representations made by his constituents and his comments must be noted as such.
[Elizabeth Cunningham Doyle]
8. **Co-operative Agenda**
- 8.1 None.
- 9 **IT Implications**
- 9.1 None.
- 10 **Property Implications**
- 10.1 The property implications have been addressed in the main body of the report.
- 11 **Environmental and Health & Safety Implications**
- 11.1 None.
- 12 **Equality, community cohesion and crime implications**
- 12.1 None.
- 13 **Equality Impact Assessment Completed?**
- 14.1 No.
- 14 **Key Decision**
- 14.1 No.
- 15 **Key Decision Reference**
- 15.1 Not applicable.
- 16 **Background Papers**
- 16.1 None.
- 17 **Appendices**
- 17.1 Appendix One - Plan.
Appendix Two - Valuation Report
Appendix Three - Representation from Councillor Bashforth



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PRIVATE & CONFIDENTIAL

VALUATION AND APPRAISAL

as at September 2018

PREPARED ON BEHALF OF

Oldham Borough Council (as Charity Trustee)

Land at Shaw Road End Park, Broadway, Royton, Oldham

Document Control Sheet

Project title Land at Shaw Road End Park, Broadway, Royton, Oldham

Revision 1

Status Final

Control date 12 September 2018

Record of Issue

Issue	Status	Author	Date	Check	Date	Authorised	Date
1	Final	AS	12-09-2018			AS	12-09-2018

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1. Engagement of Stannybrook Property Consultants Ltd

1.1 Instructions

We refer to your instructions of 5th July 2018 and 5th September 2018 and to our Terms of Engagement letter and General Terms of Business for Valuations of the same date, to provide a valuation report for the freehold/long leasehold interest in land at Shaw Road End Park, Broadway, Royton, Oldham as shown edged red and edged green on the plan contained within Appendix 1.

This valuation has been carried out in accordance with our General Terms of Business for Valuations (“General Terms of Business”), as attached at Appendix 3.

1.2 Client

Our client for this instruction is Oldham Borough Council (“the Client”) as Charity Trustee.

1.3 Valuation Standards

This valuation has been undertaken in accordance with s.119 of the Charities Act 2011, the Charities (Qualified Surveyors Reports) Regulations 1992 and the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Global Standards (incorporating the International Valuation Standards) 2017 (the Red Book).

1.4 Purpose of Valuation

The Client has confirmed that this valuation report is required for the purposes of determining the market value of the subject properties and helping to advise the Charity whether it is in their financial interests to proceed with a property exchange. This report is not for lending purposes and must not, in any circumstances, be used for the securing of finance.

1.5 Conflict of Interest

We confirm that we do not have any material connection or involvement giving rise to a conflict of interest and are providing an objective and unbiased valuation. We are acting as External Valuers, as defined in the Red Book.

1.6 Responsibility to Third Parties

Our valuation report is only for the use of our Client and no liability is accepted to any third party for the whole or any part of its contents.

1.7 Disclosure & Publication

Neither the whole nor any part of this valuation nor any reference thereto may be included in any published document, circular or statement nor published in any way without our prior written approval of the form or context in which it may appear.

1.8 Limitations on Liability

No claim arising out of or in connection with this valuation report may be brought against any director, employee, or consultant of Stannybrook Property Consultants Ltd. Those individuals will not have a personal duty of care to any party.

Stannybrook Property Consultants' total liability for any direct loss or damage caused by negligence or breach of contract in relation to this instruction and valuation report is limited to the amount specified in the Terms of Engagement letter. We do not accept liability for any indirect or consequential loss (such as loss of profits).

In accordance with VPS3 of the Red Book, the valuer, on behalf of Stannybrook Property Consultants Ltd, with the responsibility for this report is Akeel Shafiq BSc (Hons) MRICS. We confirm that the valuer meets the requirements of the RICS Valuation – Professional Standards PS 2, having sufficient current knowledge of the particular market and the skills and understanding to undertake the valuation competently.

1.9 Inspection

The land was inspected on the 12th September 2018.

1.10 Investigations

The extent of enquiries/investigations made is set out in our General Terms of Business. In carrying out this instruction we have undertaken verbal / web based enquiries referred to in the relevant sections of this report. We have relied upon this information as being accurate and complete.

1.11 Information Provided

We have been provided with information by the Client, the Client's advisors and other third parties. We have relied upon this information as being materially correct in all aspects.

In particular, we detail the following.

- Information relating to the extent of the property.
- Information relating to Title.
- Information relating to the planning status of the property.
- Information relating to the condition of the property.
- Information relating to the proposed exchange of ownership between the two parcels of land subject to the valuation report.

In addition, we have had regard to verbal discussions with the Client in order to ascertain the veracity of the information supplied.

In the absence of any documents or information provided, we have had to rely solely upon our own enquiries as outlined in this report. Any assumptions resulting from the lack of information are also set out in the relevant section of this report.

1.12 Valuation bases

In accordance with your instructions, we have provided opinions of value on the following bases:-

Market Value (MV)

1.13 Valuation Date

The valuation date is 15th September 2018.

2. The Property

2.1 Location

The property is located adjacent to Broadway, Royton (A663) close to its junction with Oldham Road (A671). The property is a highly prominent site in a mixed use location, with good links to both the M62 (via the A672M) and the M60 motorways (via the A663, Chadderton). A plan showing the extent of the property is highlighted edged red and edged green on the plan contained within Appendix 1.

2.2 Type of Property

The land edged red on the attached plan consists mainly of an area of hardstanding used for car parking by visitors to the adjoining Shaw Road End Park and the nearby St. Anne's Primary School, the remainder of the land forms part of a naturalised area that no longer appears to benefit from regular maintenance.

The land edged green on the attached plan is a relatively flat area of land, forming a small part of an informal grassed football pitch, together with a more formal multi-use games (MUGA) court.

2.3 Description

The land edged red on the attached plan is approximately square in shape and measures circa 1,633 m² (0.4 acres). The land slopes very gently and consistently from south to north.

It is understood that the land previously formed part of an entrance into the adjoining former Our Lady's Secondary School which was demolished approximately 5 years ago. Whilst the adjoining former school site has been cleared and remains vacant, there are gates on the northern boundary of the subject site which still provide access into the school land.

We are advised that the subject land edged red on the attached plan does not adjoin the adopted highway, a small strip of land which separates the subject land from the adopted highway is in third party ownership.

The land edged green on the attached plan is rectangular in shape and measures approximately 2,955 m² (0.73 acres). The part of the site which forms a small part of a grassed football pitch undulates slightly and slopes gently and consistently from south to north, down to the MUGA area which is a flat area of hardstanding. Both the grassed area and hardstanding appear to be maintained to the same quality as the adjoining parkland known as Shaw Road End Park.

The land edged green similarly does not adjoin the adopted highway and can either be accessed via the existing Shaw Road End Park to the South and East or via the former Our Lady's Secondary School site to the north and west.

2.4 Planning and Scheme

Both parcels of land (i.e. the land edged red and the land edged green) are unallocated in the Local Development Framework.

It is understood that the Charity Trustee, who owns the land edged red, is considering swapping its landholding for the adjoining land edged green which is held by a third party. It is further understood that should the swap proceed, the existing use of the respective parcels of land would continue with the swap simply intending to formalise the land held by the Trust.

2.5 Highways

There is no direct access from the adopted highway to either the land shown edged red on the attached plan or to the land shown edged green.

Access to the red land is via land is third party ownership, or via the Trusts existing park to the east of the subject land. Access to the land edged green is via the formal park held by the Trust.

2.6 Deleterious Materials and Asbestos

We have not arranged for an inspection to be carried out to determine whether or not any deleterious or hazardous materials are present on the properties and we are therefore, unable to report that the property is free from risk in this respect. For the purposes of this valuation, we have assumed that investigations would not disclose the presence of any such material or any adverse conditions that will affect value other than those have been disclosed to us by the Client and which have been taken into account for the purposes of this report.

In accordance with the control of Asbestos Regulations 2002, owners or occupiers of a property have a legal duty to identify, assess and manage all Asbestos Containing Materials (ACM's) on their premises. Whilst we were unable to identify any ACM's, our survey was limited and for valuation purposes only.

2.7 Statutory Enquiries

We have not undertaken formal enquiries with the Local Planning Authority as they have a policy of only responding in writing outside the time scale within which the Report was required.

We have assumed that for the purposes of providing our advice, that the property has consent for its existing use as governed by the Town and Country Planning (Use Classes) Order 1987 as amended.

We are not aware of any development proposals for the immediate area that may have an adverse effect upon the property.

2.8 Services

We have not tested any of the services and our comments below are made from a purely from the information that has been provided to us.

We understand that the property would have access to mains gas, water, electricity and drainage connections.

2.9 Environmental Issues

In providing our opinion of value we make no allowance for any rights, liabilities or obligations arising from any legislation, specifically the:

- (a) Environmental Protection Act 1990
- (b) Environmental Act 1995

Soil stability, mining and geological reports are not undertaken by us or normally inspected. Unless we are instructed to the contrary, we assume that the ground and any adjoining or nearby areas are not contaminated, that there are no dangerous materials within the vicinity. Other than the abnormal cost information that has been disclosed to us by the Client which has been taken into account for the purposes of this report we have not allowed for any further abnormal costs.

Other than the information already disclosed to us by the Client there is no sign of anything on site that would indicate the presence of any contamination affecting the property or neighbouring property that would affect our valuation. However, should it be established subsequently that further contamination exists at the property or on any neighbouring land which we have not already been asked to allow for in the abnormal costs provided, or that the premises have been or are being put to any contaminative use, this might reduce the values now reported.

2.10 Tenure and Occupational Leases

We have assumed that there is a good and marketable title for the property being free from any onerous restrictions or covenants other than those which have been referred to as part of this report.

We have assumed that there are no restrictions on the use or the developable area of the property other than that which has been referred to as part of this report. Should any documentation become evident proving information to the contrary, we reserve the right to amend our valuation advice accordingly.

We have assumed that there are no further leases on the properties. Again, should any documentation become evident proving information to the contrary, we reserve the right to amend our valuation advice accordingly.

3. Valuation

3.1 Valuation Methodology

Given the nature of the property and the purposes of the disposal, we have used a comparable approach to formulate a land value for the site.

3.2 Comparable Land Values

In assessing an appropriate value for the site we have made reference to the following transactions of open space:

Land at Worsley Street, Oldham, OL8 2DE

Parcel of open grassland with some trees located in a residential estate. Approximately 0.11 acres sold for £18,000 (i.e. £163,636/acre) at Pugh Auction, 7 June 2018.

Land to the West of Whitehouse Avenue, Oldham, OL4 1QG

Parcel of land currently used as amenity land for the surrounding houses. Approximately 0.29 acres sold for £28,000 (i.e. £96,551/acre) at Pugh Auction, 12 September 2017.

Land at Waterworks Road, Waterhead, OL4 2JL

Parcel of Greenbelt land. Approximately 1.6 acres sold for £29,000 (i.e. £18,125/acre) at Auction House auction, 15 May 2018.

Land adjoining GGR, Causeway, Broadway Business Park, Chadderton

Sloping land in industrial location, subject to an occupation with National Grid for an electricity pylon and overhead cabling. Approximately 0.39 acres sold for £36,000 (i.e. £92,307/acre), August 2017.

Land adjoining Swans Travel, Broadgate, Broadway Business Park, Chadderton

Mound of land in industrial location, subject to an occupation with National Grid for an electricity pylon and overhead cabling. Approximately 0.58 acres sold for £32,000 (i.e. £55,172/acre), August 2017.

3.3 Opinion of Value

The valuation for the subject land shown edged red and edged green at Shaw Road End Park has been calculated using a comparative approach, using similar land transactions within the borough.

The comparable transactions listed provide a range of values however it is our opinion that the evidence from the recent disposal at Whitehouse Avenue represents the most similar characteristics to the subject land fronting Broadway.

In respect to the land shown edged red on the attached plan, whilst this does not currently adjoin the adopted highway, we are advised that if it is joined with additional land currently in third party ownership it could help to form future access into the adjoining former Our Lady's Secondary School site. Whilst the valuer is unaware of any formal adverse rights across the land the site has been used by members of the public in connection with the use of the adjoining park for a significant number of years. We are also advised that the school which occupied the adjoining land also utilised the subject land for a number of years with a number of parties accessing the school site, without challenge, over the land edged red.

As the land edged red enjoys more prominence than the parcel of land edged green, it would be reasonable to adopt a higher rate when valuing the land edged red. As such, it is proposed to adopt a rate equating to £125,000/acre. As the land edged red measures 0.40 acres or thereabouts, this would equate to a value of £50,000.

We are therefore of the opinion that the current market value of the freehold/long leasehold interest of the land edged red is £50,000.

In respect to the area of land shown edged green, this land has similarly been used by members of the public for recreational uses for a number of years. This land enjoys less prominence compared with the red edged land and it is therefore proposed that a value equating to £75,000/acre is adopted for this land. As the land edged green on the attached plan extends to 0.73 acres or thereabout, this would equate to a value in the region of £54,750.

We are therefore of the opinion that the current market value of the freehold/long leasehold interest of the land edged green is £55,000.

This opinion is based on the assumption on the statements and facts set out in this report, subject to (if appropriate to this report) any recommended further enquiries by solicitors or specialist consultants, including a satisfactory report on title.

No allowance has been made for liability for taxation which may arise on disposal, whether actual or notional and the valuation does not reflect the cost of acquisition or realisation.

3.4 Valuation Commentary / Method of Disposal

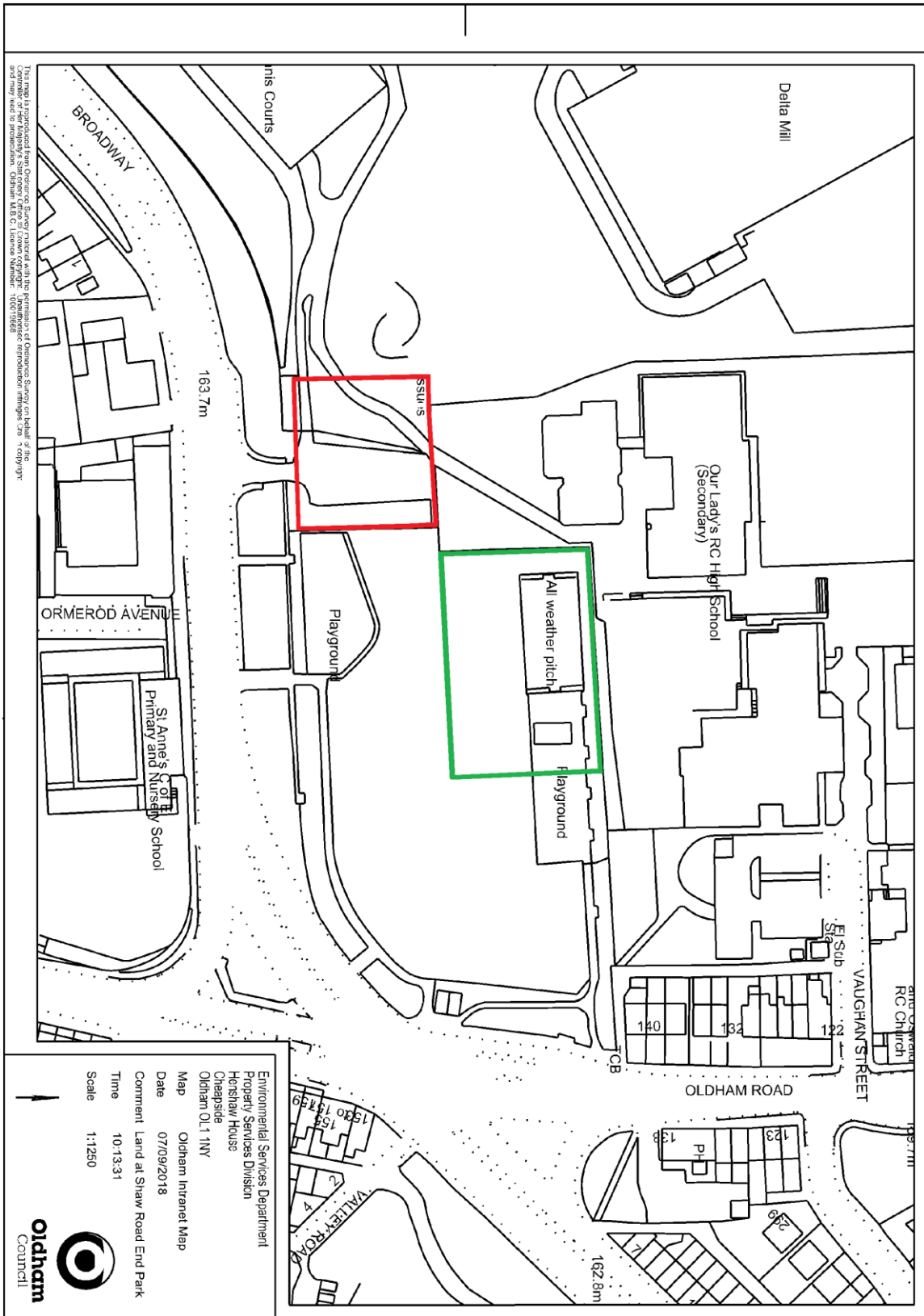
As outlined above, both the land edged red and the land edged green are landlocked and can currently only be accessed via existing land held by either party (i.e. the Council in its statutory capacity and the Council in its role as Charity Trustee). As such, in the absence of any access provision, few investors are likely to acquire what essentially would be a landlocked area of land.

As the Council (in its statutory capacity) own adjoining land, it would be reasonable to assume that the sale of the Charity Land (edged red) would be of interest to the Council who as special purchaser can benefit from synergistic value as such it would be appropriate to consider a direct disposal between the parties rather than progressing an open marketing exercise which is likely to be unsuccessful.

We have assumed that the acquisition of the existing Council land (edged green) by the Charity would be in the interests of the charity as it would effectively be swapping a smaller area of land (some of which is landscaped and contributes little to the function of the charity) for a much larger area which is currently set out as a grass football pitch and formal multi use games area. By acquiring the additional land the charity would therefore be furthering its objectives and function.

APPENDIX 1

Location Plan - For Identification Purposes Only



APPENDIX 2

Photographs

Trust Land - Edged Red in Appendix 1







Council Land (Edged Green in Appendix 1)





APPENDIX 3

Terms of Business

General Terms of Business for Valuations

These General Terms of Business comprise a part of our Terms of Engagement. The following General Terms of Business apply to all valuations and appraisals undertaken by Stannybrook Property Consultants Ltd unless specifically agreed otherwise in confirming instructions and so stated within the main body of the valuation report.

1. Stannybrook Property Consultants Ltd is a Private Limited Company (Company number 9459494). Our VAT registration number is 208 909 982. The details of our professional indemnity insurance is available upon request.

2. English law shall apply in every respect in relation to the valuation and the agreement with the client which shall be deemed to have been made in England. In the event of a dispute arising in connection with a valuation, unless expressly agreed otherwise in writing by Stannybrook Property Consultants Ltd, the client, and any third party using the valuation, will submit to the jurisdiction of the English Courts only. This will apply wherever the property or the client is located or the advice is provided.

3. Limitations on Liability:

3.1 Our valuation is confidential to the party to whom it is addressed for the stated purpose and no liability is accepted to any third party for the whole or any part of its contents. Liability will not subsequently be extended to any other party save on the basis of written and agreed instructions; this will incur an additional fee. Except as set out in 3.2 below the terms of the agreement between Stannybrook Property Consultants Ltd and the client are not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

3.2 No claim arising out of or in connection with this agreement may be brought against any member, employee, partner or consultant of Stannybrook Property Consultants Ltd (each called a 'Stannybrook Property Consultants Person'). Those individuals will not have a personal duty of care to the client or any other party and any such claim for losses must be brought against Stannybrook Property Consultants Ltd. Any Stannybrook Property Consultants Person may enforce this clause under the Contracts (Rights of Third Parties) Act 1999 but the terms of our agreement may be varied by agreement between the client and Stannybrook Property Consultants Ltd at any time without the need for any Stannybrook Property Consultants Ltd Person to consent.

3.3 Our maximum total liability for any direct loss or damage whether caused by our negligence or breach of contract or otherwise is limited £250,000.

3.4 We do not accept liability for any indirect or consequential loss (such as loss of profits). Nothing in these Terms of Business (or in our letter of engagement) shall exclude or limit our liability in respect of fraud or for death or personal injury caused by our negligence or for any other liability to the extent that such liability may not be excluded or limited as a matter of law.

4. If our opinion of value is disclosed to persons other than the addressees of our report, the basis of valuation should be stated. Neither the whole or any part of the valuation report nor any reference thereto may be included in any published document, circular or statement nor published in any way whatsoever whether in hard copy or electronically (including on any website) without our prior written approval of the form and context in which it may appear.

5. If you have any concerns about our service, please raise them in the first instance with the valuer concerned. If this does not result in a satisfactory resolution, please contact the relevant Director. As required by RICS, we will send you a copy of our Complaints Procedure on request.

6. Our Fees

6.1 If any invoice remains unpaid after the date on which it is due to be paid, we reserve the right to charge interest, calculated daily, from the date when payment was due until payment is made at 4% above the then prevailing bank base rate of National Westminster Bank PLC or (if higher) at the rate provided for under the Late Payment of Commercial Debts (Interest) Act

1998 and its regulations (if applicable). If we should find it necessary to use legal representatives or collection agents to recover monies due, you will be required to pay all costs and disbursements so incurred.

6.2 If before the valuation is concluded:- (a) you end this instruction, we will charge abortive fees; or (b) you delay the instruction by more than [1] month or materially alter the instruction so that additional work is required at any stage we will charge additional fees, And in each case such fees will be calculated on the basis of reasonable time and expenses incurred.

7. We may offer the following services to prospective purchasers and similarly the services may be offered to them by another organisation in circumstances where we may benefit financially: financial services, property letting and management services, building construction, refurbishment and maintenance services and the sale of the prospective purchaser's property.

8. "The Red Book" Valuations and appraisals will be carried out in accordance with the relevant edition of the RICS Valuation - Professional Standards by valuers who conform to its requirements and with regard to relevant statutes or regulations. Compliance with The Red Book is mandatory for Chartered Surveyors in the interests of maintaining high standards of service and for the protection of clients.

9. Valuation Basis Valuations and appraisals are carried out on a basis appropriate to the purpose for which they are intended and in accordance with the relevant definitions, commentary and assumptions contained in The Red Book. The basis of valuation will be agreed with you in the letter covering the specific terms for the instruction.

10. Where requested to value a portfolio, unless specifically agreed with you otherwise, we will value the individual properties separately, upon the assumption that the properties have been marketed in an orderly manner.

11. We do not undertake searches or inspections of any kind (including web based searches) for title or price paid information in any publicly available land registers, including the Land Registry for England & Wales, Registers of Scotland and Land & Property Services in Northern Ireland.

12. We do not read documents of title although, where provided, we consider and take account of matters referred to in solicitor's reports or certificates of title. We would normally assume, unless specifically informed and stated otherwise, that each property has good and marketable title and that all documentation is satisfactorily drawn and that there are no unusual outgoing, planning proposals, onerous restrictions or local authority intentions which affect the property, nor any material litigation pending.

13. No allowance is made in our valuation for expenses of realisation or for taxation which may arise in the event of a disposal and our valuation is expressed as exclusive of any VAT that may become chargeable. Properties are valued disregarding any mortgages or other charges.

14. We rely upon the information provided to us, by the sources listed, as to details of tenure and tenancies, planning consents and other relevant matters, as summarised in our report. We assume that this information is complete and correct.

15. We will exercise reasonable care and skill (but will not have an absolute obligation to you) to ensure that the property, identified by the property address in your instructions, is the property inspected by us and contained within our valuation report. If there is ambiguity as to the property address, or the extent of the property to be valued, this should be drawn to our attention in your instructions or immediately upon receipt of our report.

16. Boundaries Plans accompanying reports are for identification purposes only and should not be relied upon to define boundaries, title or easements. The extent of the site is outlined in accordance with information given to us and/or our understanding of the boundaries.

17. Enquiries of the relevant Planning and Highways Authorities in respect of matters affecting the property, where considered appropriate, are normally only obtained verbally or from a Local Authority web site, and this information is given to us, and accepted by us, on the basis that it should not be relied upon. Written enquiries can take several weeks for response and

incur charges. Where reassurance is required on planning matters, we recommend that formal written enquiries should be undertaken by the client's solicitors who should also confirm the position with regard to any legal matters referred to in our report. We assume that properties have been constructed, or are being constructed, and are occupied or used in accordance with the appropriate consents and that there are no outstanding statutory notices.

We assume that the premises comply with all relevant statutory requirements including fire and building regulations.

18. Our valuation assumes that the property would, in all respects, be insurable against all usual risks including terrorism, flooding and rising water table at normal, commercially acceptable premiums.

19. Where so instructed, areas provided from a quoted source will be relied upon. Otherwise, dimensions and areas measured on location or from plan are calculated in accordance with the current RICS Code of Measuring Practice and are quoted to a reasonable approximation, with reference to their source. Where the age of the building is estimated, this is for guidance only.

20. Structural Condition Building, structural and ground condition surveys are detailed investigations of the building, the structure, technical services and ground and soil conditions undertaken by specialist building surveyors or engineers and fall outside the normal remit of a valuation. Since we will not have carried out any of these investigations, except where separately instructed to do so, we are unable to report that the property is free of any structural fault, rot, infestation or defects of any other nature, including inherent weaknesses due to the use in construction of deleterious materials. We do reflect the contents of any building survey report referred to us or any defects or items of disrepair of which we are advised or which we note during the course of our valuation inspections but otherwise assume properties to be free from defect.

21. We assume there to be no unidentified adverse ground or soil conditions and that the load bearing qualities of the sites of each property are sufficient to support the building constructed or to be constructed thereon.

22. Investigations into environmental matters would usually be commissioned of suitably qualified environmental specialists by most responsible purchasers of higher value properties or where there was any reason to suspect contamination or a potential future liability. Furthermore, such investigation would be pursued to the point at which any inherent risk was identified and quantified before a purchase proceeded. Anyone averse to risk is strongly recommended to have a proper environmental investigation undertaken and, besides, a favourable report may be of assistance to any future sale of the property. Where we are provided with the conclusive results of such investigations, on which we are instructed to rely, these will be reflected in our valuations with reference to the source and nature of the enquiries. We would endeavour to point out any obvious indications or occurrences known to us of harmful contamination encountered during the course of our valuation enquiries.

We are not, however, environmental specialists and therefore we do not carry out any scientific investigations of sites or buildings to establish the existence or otherwise of any environmental contamination, nor do we undertake searches of public archives to seek evidence of past activities which might identify potential for contamination. In the absence of appropriate investigations and where there is no apparent reason to suspect potential for contamination, our valuation will be on the assumption that the property is unaffected. Where contamination is suspected or confirmed, but adequate investigation has not been carried out and made available to us, then the valuation will be qualified by reference to appropriate sections of The Red Book.

23. Unless specifically agreed otherwise in confirming instructions and so stated within the main body of the valuation report, we do not value or attempt to value or take into account any potential income stream or other beneficial or detrimental effect or other factor relating to undiscovered or unquantified mineral deposits, timber, airspace, sub-ground space or any other matter which would not be openly known in the market and considered to have value.

24. The client should confirm to us in writing if they require us to read leases. Where we do read leases reliance must not be placed on our interpretation of these documents without reference to solicitors, particularly where purchase or lending against the security of a property is involved.

25. We reflect our general appreciation of potential purchasers' likely perceptions of the financial status of tenants. We do not, however, carry out detailed investigations as to the financial standing of the tenants, except where specifically instructed, and assume, unless informed otherwise, that in all cases there are no significant arrears of payment and that they are capable of meeting their obligations under the terms of leases and agreements.

26. We do not provide valuations for lending purposes and our valuations must not be used for the purposes of loan security.

27. Where our instruction requires us to have regard to build cost information, for example in the valuation of properties with development potential, we strongly recommend that you supply us with build cost and other relevant information prepared by a suitably qualified construction cost professional, such as a quantity surveyor. We do not hold ourselves out to have expertise in assessing build costs and any property valuation advice provided by us will be stated to have been arrived at in reliance upon the build cost information supplied to us by you. In the absence of any build cost information supplied to us, we may have regard to published build cost information. There are severe limitations on the accuracy of build costs applied by this approach and professional advice on the build costs should be sought by you. The reliance which can be placed upon our advice in these circumstances is severely restricted. If you subsequently obtain specialist build cost advice, we recommend that we are instructed to review our advice.

28. A reinstatement assessment for insurance purposes is a specialist service and we recommend that separate instructions are issued for this specific purpose. If advice is required as a check against the adequacy of existing cover this should be specified as part of the initial instruction. Any indication given is provided only for guidance and must not be relied upon as the basis for insurance cover. Our reinstatement assessment should be compared with the owner's and if there is a material difference, then a full reinstatement valuation should be considered.

29. Where comparable evidence information is included in our report, this information is often based upon our oral enquiries and its accuracy cannot always be assured, or may be subject to undertakings as to confidentiality. However, such information would only be referred to where we had reason to believe its general accuracy or where it was in accordance with expectation. In addition, we have not inspected comparable properties.

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Appendix Three

From: Cllr S Bashforth

To: Mark Prestwich

Cc: Cllr A Chadderton; Cllr M Bashforth; Cllr H Roberts; Cllr C Phythian

Subject: Shaw Road End Park

Further to our discussions with regards to the changing of the designation of a portion of the Trust land (which you refer to as the 'Pink Land' in your recent report) on and around the above mentioned Park.

In addition to the loss of parking provision, I do have two concerns;

Firstly, with regards to the Trust issues, I need to be sure that an open consultation has been carried out. I know letters have been put on site but on reflection, I've been persuaded (and therefore agree) that this is not adequate or transparent enough. I understand the pressures you are under but this is public land left in trust and is a very sensitive issue. A full open consultation is a must and would also serve to inform residents and remove any misinformation or ambiguity about what is being proposed.

Secondly, with regards to a second access to the site, I could only support an access point from here if it was a one way entrance i.e. only entering via Broadway as a left turn. This is a very busy four lane junction facing the entrance to the petrol station and just past the traffic light controlled crossing. I appreciate that the Trust land is currently accessed by users of the car park from both directions of traffic, but this current use is fairly light compared with a potential higher intensity residential use for example. Construction traffic during any redevelopment of the former school site could cause safety problems if this situation is not carefully considered and reviewed. I would also suggest that the Council or any future developer would also need to demonstrate that all other options for a permanent second access into the site have been completely explored before a decision is made on any proposed second access point.

Finally, just for clarity, whilst I have read and reviewed the comments made on social media, my comments and position is not exclusively influenced by these posts. I have also had similarly reasonable concerns put to me by members of the Royton Local History Society, a local Scout group, a local church and various members of the public and users of the school including a senior member of the adjacent primary school.

I do not oppose reasonable development, but I am not prepared to give anything up lightly. I take the opinion of my constituents very seriously and it appears from a significant number of people who I have met and spoken with, that they believe something which they consider valuable to them, is being taken away.

I understand that not everyone may agree with me and the opinion of my constituents which I accept although, I stand by these comments which I feel are valid and would ask that you pass my concerns onto the Charity Trustees.

As always, happy to chat and meet with you if required.

Steve B

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Report to Charitable Trustee Committee

William Hague Trust – Update on the sale of the Hollies, Frederick Street, Werneth

Report Author: Ben Hill – Principal Regeneration Officer
Ext. 5261

26 November 2018

Reason for Decision

To update the committee on the sale of 'The Hollies', Frederick Street, Werneth.

Recommendations

To note the slow progress made with regards to the sale of The Hollies to Greenstone Construction Ltd.

Delegate authority to Officers to re-market the site in accordance with Charity Commission's Guidance in January 2019 if significant progress is not made by the end of the year.

Update on the sale of 'The Hollies', Frederick Street, Werneth**1 Background**

- 1.1 The Hollies was a former Day Care Centre and has a gross site area of some 3.20 acres (2.5 acres net developable area). Since being vacated in 2005 the property has suffered extensive vandalism and more recently a fire
- 1.2 The premises are subject to a Trust (William Taylor Hague bequest) and OMBC is the Charitable Trustee. In 2011, at the instigation of the Charity Commission a board of trustees was established with representation from one member of the Council and representation from two independent trustees. This was because the Charity Commission was keen to ensure appropriate independence in the decision making of the trustees to ensure that there was no conflict of interest between the competing public interests of the Council carrying out its statutory functions and the Council acting as a charitable trustee. It was vital that the trustees acted according to the objects of the charity and in the interests of its beneficiaries and not in the broader interests of the residents of the borough of Oldham. The board of trustees met regularly to make decisions in relation to the trust's assets.
- 1.3 In June 2011 the Charity Commission approved the sale of The Hollies on the condition that the capital receipt should be distributed immediately to a charity or charities established for the relieving of the sick or of poverty.
- 1.4 Approval to market the property was originally obtained in October 2011 and approved marketing of the site jointly with the adjacent Woodbank Centre. After this exercise, both sites were subsequently sold separately to different purchaser.
- 1.5 A Contract to sell the Property was entered into in July 2012 to Kumar Zaman trading as Greenstone Construction Ltd. A condition of the sale was that Greenstone submitted a planning application for the redevelopment of the Property. However, this was never submitted and so in 2016, it was considered that Greenstone was in breach of the contract and the contract was terminated and the deposit of £42,500 was retained in a separate trust fund accordance with the terms of the contract. .
- 1.6 The opportunity was re-marketed in line with Charity Commission's published Guidance for disposal of charitable land for a period of 8 weeks commencing on 30 May 2017 until 21 July 2017.
- 1.7 Greenstone Construction Ltd was selected as its bid provided the highest value for the site. A non – returnable deposit of 30% was also offered and bank statements showing proof of funds provided. The independent trustees also recommend the acceptance of the best and final offer from Greenstone Construction Ltd.

2 Current Position

- 2.1 The proposed disposal of the land was advertised via a Notice under S121 (2) Charities Act 2011. This is a public notice inviting representations from members of the public within the timescale prescribed which must not be less than one month from the date of the notice.

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- 2.2 The S121 Notice was placed on site and in the Manchester Evening News between 5th October and 6th November 2018. No representations or objections were received within the given time period
- 2.3 Whilst progress with the sale of the property is being made negotiations have been slow. CPSE's and draft agreements have been issued and various queries around issues such as title and insurance clarified.
- 2.4 To date no firm commitment has been given to accept or sign the Heads of Terms. The most recent communication from the purchaser was to try to renegotiate the level of deposit from 30% to 5% and increase the long stop date from 9 months to 18 months for planning to be secured and all monies paid. This has been rejected and the purchaser was given until 16th November to inform us of his intentions to continue with the sale as per his offer.
- 2.5 It is proposed that if no substantial progress with the sale is made by end of the year, the site should be remarketed in accordance with the Charity Commission's published Guidance for disposal of charitable land in January 2019.

3 Options/Alternatives

- 3.1 Option 1 – Continue with the sale of the land to Greenstone Construction Ltd but if no substantial progress has been made by 31 December 2018, then the site to be re-marketed.
- 3.2 Option 2 – Re-market the site. Whilst progress with Greenstone and its solicitors has been slow, there has been correspondence and some progress. As such this option could be seen as being heavy handed.
- 3.3 Option 3 – Continue with the sale to Greenstone with no deadline set for substantial progress.

4 Preferred Option

- 4.1 Option 1 is the preferred option as re-marketing the site will take time and not necessarily provide a higher offer. The site was marketed widely last time with adverts placed in national media (Estates Gazette).

5 Consultation

- 5.1 Consultation has taken place with the board of trustees referred to in paragraph 1.2 above including the two independent trustees and their advice will be tabled at the meeting of the Charitable Trust Committee.

6 Financial Implications

6.1 Capital Implications

- 6.1.1 There are no capital implications arising from this report. Should the asset be remarketed, a further report will contain relevant financial implications.

(Jit Kara)

7 Legal Services Comments

7.1 When Members are acting in their capacity as charitable trustees they have a duty to act in the best interests of the charity. The Charity Commission has issued some specific guidance for guidance which should be followed:

“Act in your charity’s best interests

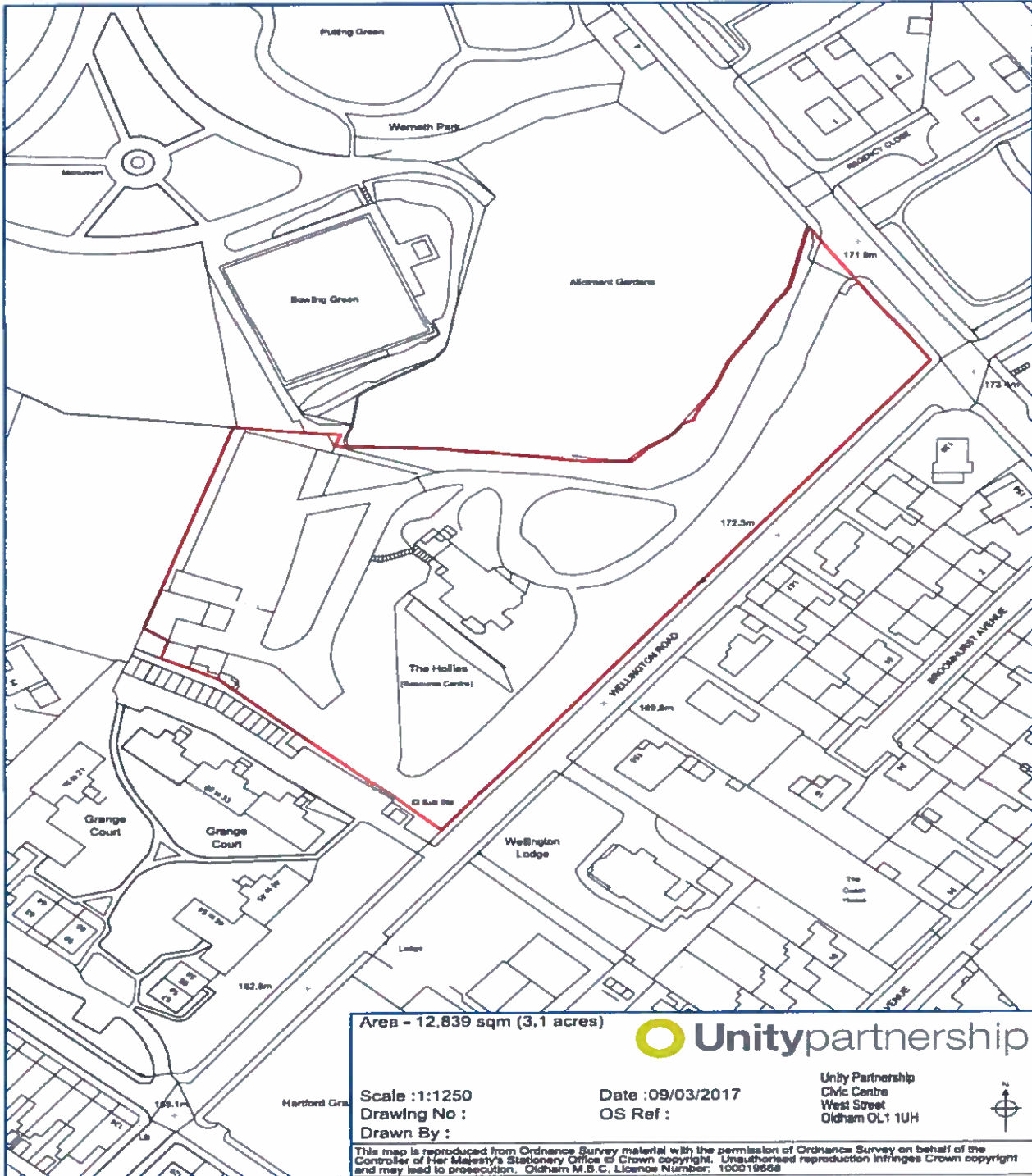
- You must:
- do what will best enable the charity to carry out its purposes, both now and in the future
- make balanced and adequately informed decisions, thinking about the long term as well as the short term.
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests
- not receive any benefit from the charity unless it’s properly authorised and is clearly in the charity’s interests.”

When making decisions the trustees must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors
- ignore any irrelevant factors
- deal with conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstance”

7.2 This is the second attempt to sell the Property and the progress of the current sale has been slow. The Charity Commission first approved the sale of the site in June 2011 with the capital receipt to be distributed immediately. The decision to continue and try to progress the sale with Greenstone needs to be balanced with the need to act within the best interests of the Charity and advance the purposes of the Charity.

Victoria Tunnicliffe and Elizabeth Cunningham-Doyle



Area - 12,839 sqm (3.1 acres)



Scale :1:1250

Date :09/03/2017

Drawing No :

OS Ref :

Drawn By :

Unity Partnership
Civic Centre
West Street
Oldham OL1 1UH



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FOR PUBLICATION



Report to CHARITABLE TRUST COMMITTEE

146 Werneth Hall Road, Werneth

Officer Contact: Paul Entwistle - Director of Legal Services

Report Author: Elizabeth Cunningham-Doyle - Solicitor
Ext. 4840

26th November 2018

Reason for Decision

To comply with the guidance issued by the Charity Commission on the requirement for consultation before proceeding to widen the objects of the charity.

Recommendation

To authorise officers to carry out a consultation exercise on behalf of the Charitable Trustees of 146 Werneth Hall Road on the proposal to widen the objects of the charity to include:

“To advance the education of the public by grant funding charities offering training and learning in the life skills necessary to manage financial hardship, social or economic deprivation, social exclusion or poor mental or physical health.”

146 Werneth Hall Road, Werneth**1 Background**

- 1.1 146 Werneth Hall Road is a former residential property which was gifted to the Council by Sarah Lees by a deed dated 8th January 1914 with the specific request that it be “assured as a site for a school for the teaching of housewifery and other domestic tasks”. A decision is now required regarding the future of the property particularly in light of the charitable use contained within the Council’s title to the property.
- 1.2 Following a meeting of the Council’s Charitable Trust Committee on 5th September 2018 an informal approach was again made to the Charity Commission to advise of positive officer discussions with Action Together who confirmed a willingness to work with Council officers (representing the Trustees) to undertake a targeted public consultation to ascertain where funds from a future sale of the property could be distributed.
- 1.3 The Charity Commission has confirmed that this approach, if adopted, would not be inconsistent with the provisions of section 67 of the Charities Act 2011 and have provided guidance as to how the consultation should proceed. The Commission further confirmed that if the consultation accords with their directions and provides some clear research and evidence of need and compatibility amongst local charities then there is every expectation that the Commission would grant a scheme that provides a power of sale to allow the distribution of proceeds from a future sale of the property.
- 1.4 The Charity Commission has suggested that in such circumstances then the Commission could permit the revision of the Charitable objectives of the trust – for example to read “To advance the education of the public by grant funding charities offering training and learning in the life skills necessary to manage financial hardship, social or economic deprivation, social exclusion or poor mental or physical health.”
- 1.5 It is proposed the consultation will explore how local charitable providers could meet these new proposed objectives and working with Action Together a pro-forma response questionnaire with FAQ`s will be compiled to test the likelihood of finding appropriate beneficiaries for any funds that are released.

The consultation will target organisations including those on the Action Together mailing list; other Charities; Faith Groups; Support Agencies; Historical Society; Public Sector Bodies; Police; Housing; Ward Councillors; Education and Early years and Special Needs Teams. A consultation plan is appended to this report at Appendix 1.

- 1.6 The report to the Charitable Trustees Committee meeting of 19th September 2017 provides some further background detailing the condition of the property and the cost of necessary works. A copy of the report is available by way of background papers.

2 Current Position

- 2.1 Trustees are asked to consider the response from the Charity Commission and, if satisfied, proceed to instruct officers to commence a formal targeted consultation exercise and report back to Trustees on the outcome of the consultation process in due course.

3 Options/Alternatives

3.1 Trustees are not required to consider options in this case owing to the fact that the Council is acting in its capacity as Charitable Trustee and not in its capacity as a statutory body acting under local government legislation.

4 **Preferred Option**

4.1 Instruct officers to commence a targeted consultation process.

5 **Consultation**

5.1 The proposed plan for the proposed consultation process is appended to this report at Appendix 1.

6 **Financial Implications**

6.1 There are no capital finance implication at this time, only staff time in undertaking the formal consultation. Further financial comments will be added to a future report following the consultation.

(Jit Kara)

7 **Legal Services Comments**

7.1 Legal Services have been in consultation with the Charity Commission at the behest of the Charitable Trust Committee and have received a comprehensive response from Mr Tim Reese at the Charity Commission who has confirmed the advice given in his letter of 20th June 2018 a copy of which is appended to this report at Appendix 2.

7.2 In his letter he confirms that he is satisfied that the criteria for making a Cy-pres Scheme under Section 62 Charities Act 2011 are met.

7.3 In the accompanying email dated 22nd October 2018 (see Appendix 3) the Charity Commission has indicated that it may be willing to grant a Cy-pres scheme provided the trustees follow the advice given in its letter of 20th June. The Commission has also suggested some widened objects for the charity. However, the Commission expects trustees to have carried out a consultation exercise appropriate to the situation to help inform their decision making as to whether or not the new purposes are appropriate.

7.4 The Trustees have to consider the proposed consultation plan and whether or not it is appropriate to the situation and whether they would wish to make any amendments to the proposed consultation plan. If satisfied, they should give instructions to officers to carry out the consultation on their behalf but in their name alone and not in the name of the Council as a statutory body. Therefore, Oldham Council's branding should not be used.

7.5 Officers should be requested to report back to the Charitable Trust Committee with the results of the consultation exercise at a date and time which the Trustees consider appropriate.

(Elizabeth Cunningham Doyle)

8. **Co-operative Agenda**

8.1 Not applicable

9 **Human Resources Comments**

-
- 9.1 Not applicable
- 10 **Risk Assessments**
- 10.1 None
- 11 **IT Implications**
- 11.1 Not applicable
- 12 **Property Implications**
- 12.1 There are no immediate property implications arising from the content of this report.
(Mark Elton)
- 13 **Procurement Implications**
- 13.1 Not applicable
- 14 **Environmental and Health & Safety Implications**
- 14.1 Not applicable
- 15 **Equality, community cohesion and crime implications**
- 15.1 Not applicable
- 16 **Equality Impact Assessment Completed?**
- 16.1 Not applicable
- 17 **Key Decision**
- 17.1 Not applicable
- 18 **Key Decision Reference**
- 18.1 Not applicable
- 19 **Background Papers**
- 19.1 Report to the Charitable Trustees Committee meeting – 19th September 2017.
- 20 **Appendices**
- 20.1 Appendix 1 Consultation Plan
- 20.2 Appendix 2 Letter from the Charity Commission dated 20th June 2018
- 20.3 Appendix 3 Email correspondence from Tim Reese at the Charity Commission dated 22nd October 2018

146 Werneth Hall Road Consultation Plan

Purpose

To seek stakeholders views on the proposal to widen the charitable objects of the original gift of 146 Werneth Hall Road.

Stakeholders

Voluntary and Community Sector organisations and charities through Action Together
Faith sector through Oldham Interfaith Forum
Children and young people through Mahdlo
Oldham Historical Research Group
Ward Councillors, West Oldham District Executive, Cabinet members
Archives, Early Years, Lifelong Learning, Youth Service, Assets, Policy, Communications
Public Services – Police, NHS CCG, Housing providers

Method of consultation

Document outlining:

Background

Proposal

Purpose of consultation

Response ticklist – plus open comments option

Emailed to above groups/recipients

Responses

To be directed to a specific address via email or letter

Duration

To be decided by Trustees

146 Werneth Hall Road Consultation Document

Background

No 146 Werneth Hall Road was gifted to the people of Oldham in perpetuity by Sarah Anne Lees. The original purpose set out in the charitable gift was that the building was to be used for the teaching of housewifery and other domestic tasks for local people.

The Charitable Trust Committee holds the building situate in Trust. Owing to the poor condition of the building and the significant costs of repair and the fact that there is not a single charity in the borough with the same objectives as the charity, the Trustees are now considering selling the building. The sale value of the building would then be held by the Charitable Trust Committee to distribute for the purposes of the charity

The Proposal

Because the original charitable objectives are outdated the Charitable Trust Committee has approached the Charities Commission to widen the objectives of the charity from a school for housewifery and other domestic tasks to supporting organisations that work with local people on wider social and education and life skills.

Purpose of the consultation

As key local stakeholders in the community you are being consulted on the proposed changes to the charitable objectives of the original gift of 146 Werneth Hall Road.

Stakeholder Feedback

Please would you provide a response to the questions below by either circling Yes or No:

The original charitable objectives of a school for housewifery and other domestic tasks are outdated and should be changed **Yes / No**

Please would you tick your most appropriate response and provide any further comments that you may have about the proposal to widen the objectives of the charity to the following:

" To advance the education of the public by grant funding charities offering training and learning in the life skills necessary to manage financial hardship, social or economic deprivation, social exclusion or poor mental or physical health".

- I agree with the proposal to change the charitable objectives
- I **do not** agree with the proposal to change the original charitable objectives
- I feel the charitable objective should be changed to _____

Other comments: _____



CHARITY COMMISSION
FOR ENGLAND AND WALES

Elizabeth Cunningham-Doyle
By e-mail to
Elizabeth.Cunningham-
Doyle@oldham.gov.uk

Charity Commission
PO Box 211
Bootle
L20 7YX

T: 0300 065 1805

Your ref:
Our ref: C-469965

Date: 20 June 2018

Dear Elizabeth

Former Werneth Youth Centre

Thank you for taking the time to speak with me earlier.

As you noted it is important to recognise and properly deal with the conflicts of interests that arise from the Council's dual role as local authority and charity trustee. Trustees should familiarise themselves with our guidance "[It's your decision: charity trustees and decision making \(CC27\)](#)" which sets out principles to help trustees meet their duties when making decisions about their charities. They should also familiarise themselves with "[Conflicts of interest: a guide for charity trustees \(CC29\)](#)".

I have, as promised, set out some guidance below on the process for applying for a scheme.

Overview

In altering the purpose of a charity by scheme, the steps to be followed are set out in the Charities Act 2011. In summary, it is necessary to:

- firstly, identify the circumstances that make it necessary to alter the present purpose(s) and ensure they meet the criteria for making a scheme; and
- secondly, consider the similar purpose(s) that the charity should now have – that is, the use to which the charity's property might now be put.

On track to meet your deadline?

Visit www.gov.uk/charity-commission for help on filing your annual return and accounts

t: 0300 066 9197 (General enquiries)
0300 066 9219 (Textphone)

w: www.gov.uk/charity-commission

When this has been done, it is necessary to:

- consult with stakeholders and consider the results (if this has not already been done) and make any necessary modification to the proposals;
- pass a resolution at a meeting of the trustees to formally apply for the scheme;
- consider the draft that we then prepare (if we agree to make a scheme); and
- arrange to publish a notice of our intention to make the scheme (if we think this is necessary).

In making their decisions, the trustees should ensure they follow our [decision-making guidance](#).

1. Demonstrating the criteria for making a scheme have been met

In order to provide a scheme, we must be satisfied that the criteria for making a scheme to alter the purposes of the charity have been met. These criteria are known as ‘cy pres occasions’ and are set out in s.62 of the Charities Act 2011.

Section 4.2 of the following guidance explains the circumstances in which we can make a scheme to change a charity’s objects. [Changing your charity's governing document](#)

More detailed guidance can be found in our [Operational Guidance - Cy pres](#)

In this case we are satisfied that the criteria have been met. We understand the property is no longer suitable for the original purposes due to structural problems and the trustee does not have funds to repair the property. In addition we are told there is no longer the need for a school for teaching housewifery and other domestic subjects as required by the existing trusts.

2. Deciding the new purposes/objects

Because the criteria for making a scheme have been met, we can make a scheme to provide new purposes of a similar nature. When deciding on the new purposes, we have to consider:

- The spirit of the original gift;
- The desirability of providing new purposes that are close to the original; and
- The necessity for the new purposes to be suitable and effective in light of current social and economic circumstances.

Please set out what the trustees think the new purposes should be and explain how they relate to the three considerations above. Please provide minutes of the meeting at which these matters were considered and concluded.

3. Consultation

As section B4.2 of the following guidance explains, we expect trustees to have carried out appropriate consultation to help inform their decision-making regarding whether any of the criteria

for making a scheme have been met and, if so, what new purposes are appropriate. The consultation would need to be appropriate to the situation.

[Guidance on Scheme consultation](#)

Please provide details of what consultation has been carried out and a summary of any responses received. Please explain how this has helped inform the trustees' decision-making, both regarding whether the criteria for making a scheme has been met, and what the proposed new purposes should be.

If consultation has not yet been carried out, we would ask the trustees to conduct a suitable consultation exercise before proceeding with the scheme application.

4. Formal application for a scheme

The trustees must make a formal decision to apply for a scheme at a properly constituted meeting of the charity. This decision must be recorded in the charity's records (eg minute book). When this has been done, please email us the following confirmation:

"I declare that:

- The charity has formally made a decision to apply for a scheme.
- The meeting was held on [insert date].
- The meeting was quorate.
- All trustees are aware that this application is being made. [delete if not appropriate]"

If any trustee was not at the meeting and is not aware of this decision, they must be told. Please therefore ensure that this is done and confirm this to us.

5. Drafting the scheme and public notice

If we are satisfied that the criteria for making a scheme have been met and the other necessary information has been provided, we will consider drafting a scheme.

Before authorising the scheme, we may require public notice of the scheme as it will be authorising the sale of designated land. However, to enable us to confirm this, please answer the following questions:

- Are the trustees aware of any opposition to the proposals/draft scheme?
- Do the trustees believe the scheme will be controversial?
- Have any objections been raised to the proposals? (if yes, please provide details and explain how the trustees have taken account of these objections).

It is important that we are made aware of the likely reaction to the scheme or any potential objections. In the event that we discover that the scheme was opposed (and therefore should have been publicised) it might have to be cancelled

6. Power of sale

The scheme will need to include a power of sale to enable the trustees to sell the land. The sale will need to comply with the requirements of part 7 of the Charities Act 2011. The following guidance provides more information about these requirements: [CC28 - Disposing of charity land](#)

In particular, as the land is designated land, one of the requirements is that the trustees must give public notice of the sale and invite representations (this is different to any public notice given of the scheme itself). Section E8 of the guidance provides more information.

7. Proceeds of sale

The proceeds of sale will be permanent endowment. This means that only the income obtained from the proceeds (eg through investment) will be available to further the new objects of the charity.

If the trustees would like to be able to spend the proceeds, rather than just the income, please set out why the trustees believe this would be expedient in the interests of the charity. In doing this, the trustees will need to explain:

- how spending the proceeds of sale is consistent with the spirit of the original gift; and
- why being able to spend the permanent endowment itself, rather than just the income, would allow the charity to carry out its new purposes more effectively.

We can then consider releasing the permanent endowment restriction in the scheme.

Alternatively, if, after the scheme is authorised and the land sold, the trustees believe it would be in the charity's best interests to release the permanent endowment restriction, they could apply to us then. Further information about this process is available on our website: [Spending permanent endowment](#)

8. Summary and next steps

In summary, if the trustees think that the criteria for a scheme to alter the charity's objects have been met, please:

- Set out the trustees' proposed new purposes, bearing in mind the three considerations set out in section 2 of this letter and provide the minutes of the meeting which set out the trustees reasoning and conclusions.
- Provide details of the consultation carried out, including a summary of the responses, and explain how this has informed the trustees' decision-making.
- Formally apply for the scheme (see section 4 of this letter).
- Answer the questions regarding public notice in section 5 of this letter.

- If the trustees would like to release the permanent endowment restriction, explain how this would be expedient in the interests of the charity (see section 7 of this letter).]

Yours sincerely

Tim Reese
cscorres1@charitycommission.gsi.gov.uk

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Lori Hughes

From: CS – Correspondence1 (Queue) <CSCorres1@charitycommission.gsi.gov.uk>
Sent: 22 October 2018 11:51
To: Elizabeth Cunningham-Doyle
Subject: RE: 146 Werneth Hall Road Essential Works for Childcare Use 2/2 -FAO Tim Reese CRM:0378753
Attachments: 20180620 - Dear Mrs Cunningham-Doyle.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Elizabeth

Thank you for your e-mails.

I note the proposal is to sell the property and to apply the proceeds in making grants for similar purposes to local charities. That proposal is not inconsistent with the changes the Commission could make by scheme under the provisions of Section 67 of the Charities Act 2011. We do however expect the trustees to address the points set out in our letter of 20 June, a copy of which is attached. If we are satisfied that the points have been addressed we may produce a scheme that provides a power of sale and gives the charity new objects under which it could make grants to other charities. For example " To advance the education of the public by grant funding charities offering training and learning in the life skills necessary to manage financial hardship, social or economic deprivation, social exclusion or poor mental or physical health". When responding to the points from my earlier letter please let me have the trustee's view on these proposed objects.

Kind regards

Tim

cscorres1@charitycommission.gsi.gov.uk

W: <https://www.gov.uk/charity-commission>

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