

Report to CHARITABLE TRUST COMMITTEE

Werneth Lifelong Learning Centre, Werneth Park, Frederick Street, Oldham

Officer Contact: Dominic Whelan, Chief Operating Officer, Unity Partnership

Report Author: Daniel Meadowcroft, Highways Lead and Monitoring Officer
Ext. 2049

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Reason for Decision

To seek permission from the Charitable Trust Committee to obtain the necessary agreements, including a disposal of land, to install a fibre-optic cable and associated infrastructure into Werneth Lifelong Learning Centre located in Werneth Park

Recommendations

It is recommended that the Charitable Trust Committee considers the content of the Surveyor's Report and makes a decision

1. As to whether or not it would be in the best interests of the charity to agree to the proposed disposal and wayleave agreement to allow the LFFN connection to proceed and
2. That the terms of the wayleave are the best that could reasonably be obtained for the Charity.

Werneth Lifelong Learning Centre

1 Background

- 1.1 Werneth Park, including the Lifelong Learning Centre, was gifted to the Council on the 8th January 1936, by Dame Marjory Lees. The Council consequently holds the park and its associated buildings in Trust and this is registered with the Charity Commission under Registered Number 521273 (described as Werneth Park).
- 1.2 Oldham Council is taking part in a Greater Manchester wide Local Full Fibre Network (LFFN) programme to provide fibre connectivity to public buildings, partly funded by a grant from central government and partly funded by the council. Virgin Media Business Limited was awarded the contract to deliver this infrastructure following a competitive tender process.
- 1.3 Werneth Lifelong Learning Centre is situated on the charity land edged red on the plan appended to this report, labelled "Community Centre" on the plan (Appendix 1).

2 Current Position

- 2.1 Werneth Lifelong Learning Centre has been put forward for inclusion in the LFFN programme. A preliminary survey of the site has been undertaken to identify a proposed route into the building
 - 2.2 Oldham Council will need to enter into a wayleave agreement with Virgin Media Business Limited (the Supplier) and Virgin Media Limited (the Operator) to allow the required infrastructure and cable to be laid both within the grounds of Werneth Park and in Werneth Lifelong Learning Centre. The route identified for the proposed connection and Wayleave Agreement is appended to this report (Appendix 2).
 - 2.3 The land is owned by the Council in its capacity as a Charitable Trust. The Council is therefore required to seek consent from the trustees (Charitable Trust Committee) to agree a disposal which will enable the Council to enter into the proposed wayleave agreement.
 - 2.4 Although the proposed granting of a wayleave is not a disposal in property law, the Charity Commission's guidance states that the granting of a wayleave on charitable land should be considered a disposal.
 - 2.5 In order to agree to the disposal the trustees are required to:
 - Instruct a qualified surveyor acting exclusively for the charity to write a report on the proposed disposal
 - Advertise the proposed disposal for such period and in such manner as is advised in the surveyor's report*
 - Consider the surveyor's report and decide that they are satisfied that the terms of the proposed disposal are the best that can reasonably be obtained for the charity.
- * N.B. It is only necessary for the trustees to advertise the proposed disposal if advised to do so by the surveyor in their report.

3 Surveyor's Report

- 3.1 At the meeting on 10 March 2021, the committee instructed Council officers to commission a surveyor's report on its behalf. The committee was advised that the
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surveyor's report would be brought back to the committee for its consideration along with comments received (if any) following the advertisement.

3.2 Following the meeting on 10 March 2021 Fletcher CRE was instructed to carry out a survey on behalf of the committee. The survey was carried out by John Fletcher, who is a suitably qualified surveyor and experienced in providing surveys for charitable land disposals. He has also carried out surveys for the LFFN project on behalf of another Greater Manchester Authority.

3.3 The survey took place on 7 May 2021, following which the surveyor has provided a report for the committee's consideration. The report complies with the Charities (Qualified Surveyors Reports) Regulations 1992 and is appended to this document (Appendix 3).

3.4 Surveyors Report – Key Points

3.4.1 The surveyor has advised that in this case there is no requirement to advertise as the proposals (paragraph 1.9.5):

- a) Have no effect on the open market value
- b) Require no structural alterations
- c) Involve no change of use

3.4.2 The surveyor has advised that the terms of the wayleave are the best that the charity could reasonably obtain (paragraph 1.9.6)

3.4.3 The surveyor has confirmed that the proposed disposal and entering into the wayleaves with Virgin Media does not prejudice the market value of the property (paragraphs 1.11.1 and 8.1.5)

3.4.4 The surveyor considers that the installation of the fibre cable would not be to the detriment of the building (paragraph 7.1.2).

3.4.5 The Regulations require that both pre-disposal and post-disposal valuations are provided. The charity could then consider whether or not it is in their best interests to agree to the disposal. In this case the surveyor has advised that no value needs to be provided as the building is not being sold (paragraph 8.1.6).

3.4.6 The surveyor submits that there should be no premium paid for entering into the wayleave agreement and the building will benefit from the fibre installation (paragraph 8.1.6).

3.4.7 The surveyor has confirmed that it would be in the best interests of the charity to proceed with the proposed disposition (paragraph 8.1.7).

3.5 Since the surveyor advised that there was no requirement to advertise (see 3.4.1), the proposals were not advertised and therefore no comments have been received for the committee's consideration.

4 Decisions and Options

4.1 In order to comply with the Charity Commission guidance, and to agree to the proposed wayleave / disposition, the committee is asked to consider the surveyor's report and make two decisions:

4.1.1 Consider whether or not it would be in the best interests of the Charity to agree to the disposal. The surveyor has advised that it would be in the best interests of the Charity. (see paragraph 3.4.7)

4.1.2 Consider whether or not the terms of the disposal are the best that could reasonably be obtained for the charity. The surveyor submits that there should be no premium paid as the building will benefit from the fibre installation. (see paragraph 3.4.6) and that the terms of the wayleave are the best that could reasonably be achieved for the charity. (see paragraph 3.4.2)

4.2 The Committee is therefore asked to decide:

Option 1

- Agree that it would be in the best interests of the charity to agree to the proposed disposal,
- Agree that the terms of the disposal are the best that could reasonably be obtained for the charity
- Give its consent to Council officers to enter into the wayleave agreement with Virgin Media Business Ltd and Virgin Media Ltd to enable a fibre-optic cable to Werneth Lifelong Learning Centre through Werneth Park

Option 2

- Not to agree that it would be in the best interest of the charity to agree to the proposed disposal or not to agree that the terms of disposal are the best that could reasonably be obtained

5 Preferred Option

5.1 The preferred Option is Option 1 – to agree that it is in the best interests of the Charity to agree to the proposed disposal and wayleave agreement and that the terms of the disposal are the best that could reasonably be obtained for the charity.

5.2 Agreeing a disposal is a necessary to grant a wayleave agreement to Virgin Media Ltd and Virgin Media Business Ltd which will allow the fibre-optic cable to be installed into the building.

6 Next Steps

6.1 If the committee agrees to Option 1 then the Council will enter into the wayleave agreement with Virgin Media Ltd and Virgin Media Business Ltd and proceed with the installation.

6.2 If the committee agrees to Option 2 for either of the decisions then the disposal and wayleave will not be able to proceed and the proposed fibre connection will not be provided into the building.

7 Financial Implications

7.1 The Cabinet report 'Local Full Fibre Networks Programme' approved on 19 August 2019, approved a project sum of £1,585k, including £60k specifically for project management resources, it was subsequently agreed in March 21 that a small part these resources would be committed to fund the surveyors report, which was subsequently commissioned and now forms part of the consideration herein and an advert which it is now confirmed as being not being required.

The proposal is to agree to the proposed disposal and wayleave agreement; on the basis that the terms of the disposal are the best that could reasonably be obtained for the charity to enable Werneth Lifelong Learning Centre to be included in the LFFN programme for Oldham. The Regulations require that both pre-disposal and post-

disposal valuations are provided, in this case the surveyor has advised that no value needs to be provided as the building is not being sold, as a consequence there are no direct financial implications arising from the recommended option. (Andy Cooper).

8 Legal Services Comments

8.1 The recommendations in the report follow the Charity Commission's Operational Guidance on Disposals of charity land. The guidance confirms that the requirements of Section 119 of Charities Act 2011 also apply to the grant of a wayleave.

8.2 " Section 119 requires the charity trustees to:

- *Obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity (section 119(1)(a), ChA 2011); and*
- *Advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless the surveyor advises that it would not be in the best interests of the charity to advertise the proposed disposition) (section 119(1)(b), ChA 2011); and*
- *Decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity (section 119(1)(c), ChA 2011).*

8.3 It is therefore only necessary for the charity's trustees to advertise the proposed disposition, if advised to do so by the surveyor in their report.

8.4 The surveyor's report must cover the prescribed matters referred to in the Schedule to the Charities (Qualified Surveyors' Reports) Regulations 1992".

8.5 Provided the Charitable Trustees follow the guidance issued by the Charity Commission the Trustees will be in compliance with the legal requirements of Section 119 Charities Act 2011 in relation to the disposal of land including a wayleave. (Elizabeth Cunningham Doyle)

9. Co-operative Agenda

9.1 N/A - The co-operative agenda relates to Executive functions of the Council and is not applicable to charitable assets

10 Human Resources Comments

10.1 N/A

11 Risk Assessments

11.1 N/A

12 IT Implications

12.1 IT active equipment is located within the Comms Cabinet within the basement. The only changes required for the future would be upgrades / replacements to active equipment already in use. (John Cook)

13 Property Implications

13.1 The installation of LFFN fibre connectivity to the building, would not be to the detriment of the building as detailed within this report and will benefit from the fibre installation. (Peter Wood)

14 Procurement Implications

14.1 None

15 **Environmental and Health & Safety Implications**

15.1 The proposed connection will involve excavating a tarmac section of the car park at the Frederick Road entrance to the park to lay ducting to the building for the cable to run into. The proposed route will follow existing communication routes into the building and the tarmac will be reinstated like-for-like. The ducting will be installed directly into the cellar where the IT network cabinet is located so there will be zero visual impact to the outside of the building.

15.2 All works will be carried out according to approved risk assessments and method statements, and the works area and excavation will be appropriately signed and guarded to ensure safety of service users, park users and operatives during the works.

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

16.1 None

17 **Implications for Children and Young People**

17.1 None.

18 **Equality Impact Assessment Completed?**

18.1 No

19 **Key Decision**

19.1 No

20 **Key Decision Reference**

20.1 N/A

21 **Background Papers**

21.1 Deed of Gift – Werneth Park, 8 January 1936

22 **Appendices**

22.1 Appendix 1 – Red edged plan of Werneth Park and Werneth Lifelong Learning Centre
Appendix 2 – Proposed route for wayleave agreement
Appendix 3 – Surveyor’s Report
