

Charitable Trust Committee

Subject: 439 Middleton Road, Chadderton, OL9 9JX
(L00537)

Charities Number: Not registered.

Report Author: Rosalyn Smith, Estate Team Leader

Date: 14 June 2023

Reason for the decision:

The purpose of this report is to follow up on the last report to the Committee regarding the sale of this asset and to review the detail of the submission to the Charity Commission regarding the sale of 439 Middleton Road.

Background:

A report was brought to the Charities Trust Committee on 22nd March regarding the sale of 439 Middleton Road, an asset that is held in charitable trust. The Charitable Trust Committee agreed at the meeting to move forward with a disposal of that property. It was noted at that committee meeting that further work would be required before the sale could be commenced.

In order to progress the disposal, the Charity Commission needs to be approached with background information including the original acquisition of the asset, the occupation and use of the property, in order to obtain a "Scheme" from the Charity Commission. The Charities Trust are required to endorse the sale and alter the objectives of the trust to enable the net proceeds of the sale to be re-used as either grant funding or a donation to local voluntary organisations who provide services to people of pensionable age.

The draft outline submission is set out in Appendix A below. The use and income of the property are set out in Schedule B.

Options:

Option 1 – Agree the points set out in the recommendation below, including the wording in the draft submission. This will allow the sale of the asset to progress and Legal Services will move forward in the disposal process.

Option 2 – To refer the submission back to officers and not proceed with the recommendations. Officers will review the details of the submission and revert back to the Committee and pause the other actions required to progress the sale.

Recommendation:

The Charities Trust Committee is asked to approve the following actions are undertaken:

1. To authorise and request Legal Services to submit a report and request for Scheme to the Charity Commission substantially in the form of the attached submission (allowing for the possibility of more financial and practical information being forthcoming and added);
2. To authorise and request Estates to procure a section 119 Report (Charities Act 2011) from an independent surveyor to in effect approve the proposed sale of the Property by auction and to indicate the appropriate reserve price for a sale by auction;
3. To authorise and request Legal Services to issue the statutory section 121 Notice (Charities Act 2011) for the proposed disposal of designated charity land (unless this may be dispensed with owing to the Commission issuing the necessary Scheme etc allowing for the disposal), and
4. To authorise and request Legal Services and Estates to inform the Co-op as to the charitable asset status of the Council's occupational underleasehold interest 439 Middleton Road and to explain the need for delay in renewing their lease of the garage pending obtaining Charity Commission authorisation.

Financial Comments:

The financial implications of the disposal were set out in the previous report.

Appendices:

Appendix A: Outline of Submission to Charity Commission regarding 439 Middleton Road

Appendix B: SCHEDULE OF USE, OCCUPATION AND OF INCOME at 439 MIDDLETON ROAD, CHADDERTON

OUTLINE OF SUBMISSION TO CHARITY COMMISSION

CHARITY ASSET: 439 MIDDLETON ROAD, OLDHAM (LEASEHOLD PROPERTY – LEASE TERM EXPIRES ON 6 MAY 2851) (“PROPERTY”)

CHARITY NAME: (SUGGESTED) ARCHIE BROWN CHARITABLE TRUST

DETAILS OF GIFT: THE PROPERTY WAS TRANSFERRED TO URBAN DISTRICT COUNCIL OF CHADDERTON (“CUDC”) FOR A CONSIDERATION PROVIDED BY ARCHIE BROWN, ON 29 NOVEMBER 1946.

DETAILS OF THE CHARITABLE TRUSTS ON WHICH THIS PROPERTY IS TO BE HELD ARE SET OUT IN THE EXTRACTS FROM RELEVANT ARCHIVED MINUTES OF MEETINGS OF THE CUDC IN 1946 AND 1947.

Background

1. The Property was transferred to the Chadderton Urban District Council (CUDC) on 29 November 1946 by a deed of assignment bearing that date made between (1) Martha Hibbert and (2) the Council of the Urban District of Chadderton.
2. Consideration was stated in the said deed of assignment (“Assignment” – see Annex B) paid to the seller (Martha Hibbert) in the sum of £700 (Seven Hundred Pounds) but it appears from the archived minutes of CUDC that these monies were in fact provided or paid by Mr Archie Brown in accordance with an offer of the gift (i.e. to procure the transfer of the Property to the CUDC *for the use of old age pensioners and people of a like age, to be used as a meeting place for reading and conversational purposes*).

Note: (a copy of the minutes is annexed at Annex A (“Minutes”)).

3. It further appears from the Minutes that the CUDC resolved on 26 August 1946 subject to the approval of the Minister of Health, that it be recommended that the CUDC accept the offer of Mr Archie Brown, and that the Clerk of the Council be instructed to convey to Mr Brown the sincere thanks of the Council, on behalf of those who will be privileged to make use of the premises, for his generosity and kindly thought for the old people.
4. It further appears from the Minutes that on 14 October 1946 that the CUDC resolved that the use of the No. 439 Middleton Road, Chadderton, as a meeting place for old age pensioners and people of a like age be approved, on terms to be settled, and that the consent of the Council as the Local Housing Authority be given under Regulation 68CA of the Defence (General) Regulations, 1939, to the use for purposes other than residential of such premises.
5. It further appears from the Minutes that on 27 November 1946 the CUDC resolved to accept along with the transfer of the Property to CUDC, the offer from Mr Archie Brown a “*certain sum of money to be devoted to the cause for which the premises were purchased as the Council think fit.*”
6. It further appears from the Minutes of a meeting held on 23 December 1946 that “*the Clerk reported that Mr Archie Brown had delivered to him the title deeds of 429*

Middleton Road, together with cash to the value of £277 8s. 9d. which had been duly placed to the Council's credit in the Bank."

7. For reasons which are unclear it also appears from the Minutes that there were two separate resolutions passed (on 8 January 1947 and 5 February 1947) for the CUDC to affix its Common Seal to the deed of assignment of the lease from Martha Hibbert of the Property to the CUDC. The resolutions were materially the same and post-dated the date of the assignment.
8. On 1 April 1974 by virtue of Article 16 of Schedule 4 to the Local Authorities (England) (Property) Order 1973 the Property (along with other properties then vested in CUDC) will have vested in Oldham Borough Council.
9. It appears that owing to the circumstances of this gift (including the fact that the conveyance to the Council itself makes no mention of any trust) the charity status of the Property had not been appreciated by Oldham Borough Council until recently when a specific search was made in the archive minutes of meetings of the CUDC following a query raised over a plaque on the side of the building at 439 Middleton Road which stated: *"These premises were given to the Urban District Council of Chadderton by Archie Brown Esq of Chadderton 29 November 1946"*.
10. A search through available records has been made to establish the use which has been made of the Property since 1 April 1974 when Oldham Borough Council became the owner of the Property and the information which has been obtained is set out in the Schedule of Use and Income annexed at Annex C.
11. As will be clear from the Schedule of Use and Income, the garage at the Property is currently leased to and used by the Co-op. Currently the Co-op are holding over following expiry of a lease for a fixed term. Clearly any renewal lease will have to contain the appropriate charity provisions. The proposed terms are set out in Annex D.
12. In view of the perceived status of the Property an application has been made for the urgent registration of the Property at HM Land Registry with the standard charity restriction being entered on the Proprietorship Register and this registration has now been concluded and the Property is registered under HMLR title number MAN418555 and copies of the official copies of the title to the Property are annexed at Annex E.
13. The Council's Estates team have stated that the Property is in an extremely dilapidated state and condition which is unsuitable for any occupation or use and neither the Charity nor the Council has the available funds to carry out the repairs required. The state and condition of the Property is such that it represents a clear and present danger to the public as it is at high risk from vandalism. Furthermore the Property will continue to deteriorate rapidly which in turn will have an adverse effect on the market value of the Property.

14. As the Property cannot be used for any form of occupation or use and the risks posed to the market value of the Property by deterioration in its state and condition, the Charitable Trust Committee considers that it would be of benefit to the Charity if the Property were to be sold as soon as possible and the proceeds of sale used for the purposes of making donations/grants to suitable charitable bodies who provide support and assistance locally to persons of pensionable age.

In view of the condition of the Property it is considered that a sale by auction would realise the best value for the Property although the Charity Trustees would want this view to be backed up by a suitable independent surveyor's valuation and report.

The Council (as landowner) also acquired the freehold interest in this property and adjoining property in about 1997. Therefore, if the Property were to be sold, the Council has indicated that it would be in the interests of the Charity if the freehold interest were to be sold at the same time and the Charity Trustees have concurred with this view.

15. The Charity Trustees consider that they require a Scheme from the Charity Commission which will:

- (a) permit the Charity Trustees to enter into a lease with the Co-op on the terms set out in Annex D;
- (b) permit the sale of the Property on the open market by auction or (as the case may) by private treaty as may be advised and/or recommended by the independent chartered surveyor;
- (c) permit the Charity Trustees to use the whole of the proceeds of sale and any income accruing thereto for the purpose of making donations and/or grants (the former to be on the initiative of the Charity Trustees and the latter to be on application by prospective grantees) to appropriate voluntary bodies who provide support and assistance to persons of pensionable age and,
- (d) alter the objects of the Charity accordingly.

16. The Charity Trustees should also appreciate guidance from the Charity Commission as to whether the Property is to be regarded as designated land for the purposes of the Charities Act 2011 and if the Property is designated land, whether the issue of a Scheme by the Charity Commission permitting the grant of a lease of the garage and the sale of the whole of the Property will obviate the need for a notice pursuant to section 121 CA 2011.

Appendix B:

**SCHEDULE OF USE, OCCUPATION AND OF INCOME
PROPERTY: 439 MIDDLETON ROAD, CHADDERTON**

A. MAIN BUILDING

Period	Use	Occupation	Net Income	Note/Comment
2008 to present day	(from 2011 to Jan 2020) Offices for Taxi Firm – otherwise unoccupied	(from 2011 to Jan 2020) Mohammed Nazir and Mohammed Daud	Rent and service charge - £14,856.64* (ie loss of £14,856.64)	Unoccupied during 2008 to 2011 and again since the tenants left in Jan 2020.
[more historic information awaited from AR]				

B. GARAGE

Period	Use	Occupation	Net Income	Note/Comment
2008 to present day	Storage	Co-op	Rent [TBC]	Garage still occupied by the Co-op. The contractual term of their lease has ended but they are holding over under the Landlord and Tenant Act 1954 and Heads of Terms have been issued for its renewal.
[more historic information awaited from AR]				