

## **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**

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### **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.

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## **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

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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.

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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.”

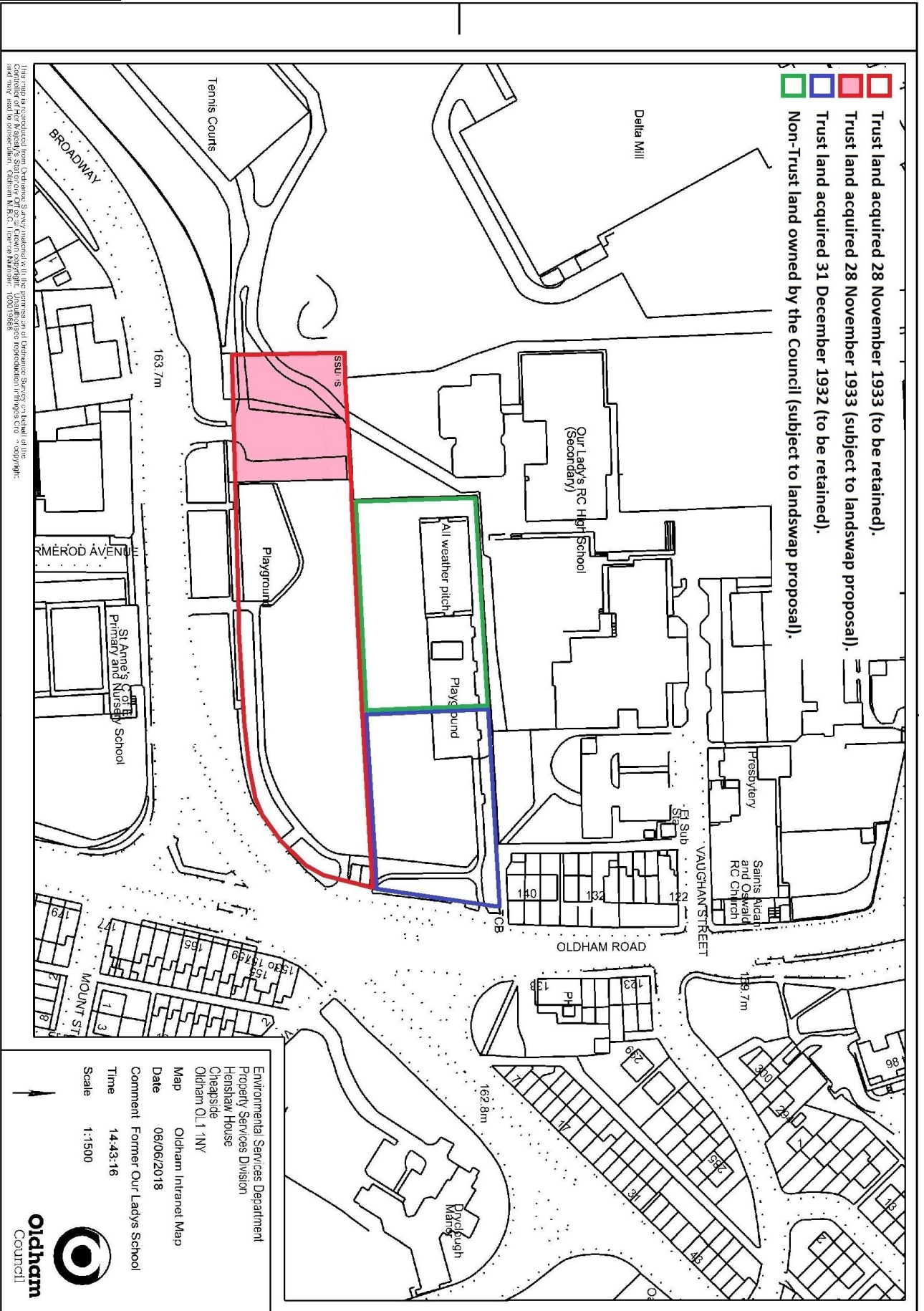
7.4 The Members are required to take full consideration of all of the representations which have been made in response to the statutory notices and make a fully reasoned decision taking into consideration all of the points which have been made by members of the public via the social media link which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

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- 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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