

Report of City Solicitor

Report to Executive Board

Date: December 2014

Subject: Calverley Workhouse Allotment Charity

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Calverley and Farsley	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. Leeds City Council is the sole trustee of The Calverley Charity – The Workhouse Allotment (charity number 504497).
2. The current purposes of the charity are the prevention or relief of poverty of residents of the former Manor of Calverley, but in recent years there has been very little call on the charity and it is felt that it would be beneficial for the purposes of the charity to be modified.
3. The charity currently has a small cash reserve of approximately £4,000 and owns approximately seven acres of land at Dawson’s Corner, Pudsey. The land is unused other than for the occasional grazing of horses and generates very little income for the charity. In addition to modifying the purposes of the charity, it is therefore proposed to dispose of part of the land to generate funds for the charity and to provide a playground on the remainder of the land.

Recommendations

4. Executive Board is requested to note the contents of this report and (being satisfied that it is expedient in the interests of the charity for the purposes to be modified) to resolve that the trusts of the charity should be modified by replacing the existing purposes of the charity (the prevention or relief of poverty of residents of the former Manor of Calverley) with the new purposes of preventing or relieving need or hardship of persons living within the former Manor of Calverley. If this recommendation is

approved the City Solicitor will notify the Charity Commission of the resolution within fourteen days.

5. Executive Board is also asked to approve the principle of disposing of the charity's land at Dawson's corner, retaining sufficient land to construct a playground, subject to the necessary consultation with the local community and to a report setting out the detailed proposals being submitted to Executive Board in due course. If this recommendation is approved the City Solicitor and the Director of City Development will liaise with Ward Members as to the exact nature of the proposals and the required consultation with a view to submitting a further report to Executive Board within the next six months.

1 Purpose of this report

- 1.1 This report seeks Members' approval to the purposes of the Calverley Charity – The Workhouse Allotment being modified so as to enable the charity to be of more use to the residents of Calverley.
- 1.2 It also seeks approval in principle to dispose of part of the land owned by the Calverley Charity – The Workhouse Allotment, with the proceeds of sale to become part of the charity's funds and to be used for the delivery of the modified purposes of the charity including the construction of a playground on land retained by the charity.

2 Background information

- 2.1 The Calverley Charity - The Workhouse Allotment was founded in 1758 following the construction in 1756 of a workhouse at Blakett Street, Calverley by Sir Walter Blakett - on January 6 1758, the Churchwardens and Overseers of the Poor at Calverley were allotted 20 acres of land on Calverley Moor by way of an enclosure award, such land to be used to generate income for the support and maintenance of the workhouse and for the relief and employment of the poor within the Manor of Calverley.
- 2.2 By 1894 the workhouse had been divided into cottages and some of the land had sold to the Great Northern Railway for the construction of a railway between Leeds and Bradford. Several other pieces of land have also been sold over the years and the land currently owned by the charity is shown edged red on the plan attached to this report.
- 2.3 The land is little used. It has occasionally been used for the grazing of horses, but otherwise does not generate any income for the charity. It is shown as future housing allocation in the Unitary Development Plan and is considered to be suitable for the construction of approximately 50 houses. The charity does not own any other assets and only has a small amount of cash in hand. As at 1 April 2014 the charity had reserves of £3,742.59 and its only other income comes from interest earned on those reserves (£19 in the financial year ending 31 March 2014).
- 2.4 Leeds City Council is currently the sole trustee of the charity though the day to day administration and operation of the charity is devolved to ward members.

- 2.5 In April 2013 Executive Board resolved to release the restrictions which then applied to the use of the capital funds of the charity on the basis that the purposes of the charity could be carried out more effectively if such funds could be spent as well as the income of the charity.
- 2.6 Notwithstanding the release of the restrictions that previously applied to the expenditure of the capital funds of the charity, there has been very little call on the charity to provide assistance. Since Executive Board approved the release of the restrictions in April 2013, the total amount expended by the charity is £2,895.

3 Main issues

- 3.1 Whilst releasing the restrictions that previously applied to the expenditure of the capital funds of the charity has enabled more assistance to be given than would otherwise have been the case, Ward Members are of the opinion that the current purposes of the charity (the prevention or relief of poverty of residents of the former Manor of Calverley) are too restrictive, and that it would be expedient in the interests of the charity (and beneficial to the residents of Calverley) for the purposes of the charity to be modified.
- 3.2 Section 275 of the Charities Act 2011 allows the trustees of an unincorporated charity to resolve that the trusts of the charity should be modified by replacing all or any of the existing purposes with new charitable purposes. This power is subject to the following conditions:
- that the gross income of the charity in its last financial year did not exceed £10,000;
 - that the charity does not hold any “designated land” (land which is held on trusts which state that it is to be used for the purposes of the charity);
 - that in so far as is reasonably practicable the new purposes of the charity consist of or include purposes that are similar in character to those that are being replaced; and
 - that the trustees are satisfied that it is expedient in the interests of the charity for its purposes to be modified.
- 3.3 As regards the first two conditions referred to in paragraph 3.2 (that the gross income of the charity in its last financial year did not exceed £10,000, and that the charity does not hold any ‘designated land’), these are satisfied in that the gross income of the charity in its last financial year was £19 and that the charity’s land is held to generate income for the charity rather than for the purposes of the charity.
- 3.4 As regards the third condition referred to in paragraph 3.2 (that in so far as is reasonably practicable the new purposes of the charity consist of or include purposes that are similar in character to the existing purposes), the proposed new purposes of the charity are as similar in character to the existing purposes as it is possible for them to be without whilst allowing them to be effective and efficient.

- 3.5 As regards the fourth condition referred to in paragraph 3.2 (that the trustees are satisfied that it is expedient in the interests of the charity for the purposes of the charity to be modified), whilst it is believed that this is the case, this is a matter that members of Executive Board must come to their own views on.
- 3.6 Assuming that members of Executive Board are of the view that it is expedient for the purposes of the charity to be modified and pass a resolution to that effect, a copy of the resolution together with a statement of the reasons for passing it has to be submitted to the Charity Commission in accordance with Section 275(6) of the Charities Act 2011.
- 3.7 Subject as set out in paragraphs 3.10 to 3.13 of this report, Section 6 of the Trusts of Land and Appointment of Trustees Act 1996 provides that, unless the land in question is 'designated land' (land which is held on trusts which state that it is to be used for the purposes of the charity) or the trusts of the charity are such that the trustees are prohibited from doing so, the trustees of land can act as if they were the absolute owners of the land (i.e. they can do anything that a normal owner can do, including disposing of the land).
- 3.8 In the case of The Calverley Charity – The Workhouse Allotment, none of the land which it owns is 'designated land' and there are no restrictions in the trusts of the charity that would prohibit the land from being sold.
- 3.9 Subject to Executive Board approval and to consultation with the local community and compliance with all applicable legislation, it is proposed that part of the charity's land should be sold for development for housing with the proceeds to be used to fund the construction of a playground for the local community on the land to be retained by the charity and the balance to be used for the wider purposes of the charity. At this stage these are only broad proposals, and a further report setting out the detailed proposals will need to be presented to Executive Board in due course, but approval is now sought as to the principle of disposing of part of the charity's land.
- 3.10 Notwithstanding the provisions of Section 6 of the Trusts of Land and Appointment of Trustees Act 1996, in disposing of land, the trustees of a charity must comply with the provisions of Sections 117-120 of the Charities Act 2011 (in so far as they are applicable to the proposed disposal) and Section 1 of the Trustee Act 2000. In addition, the trustees must also have regard to the rights of the beneficiaries of the charity.
- 3.11 Section 117 of the Charities Act 2011 provides that no land held by or in trust for a charity can be disposed of without an order of the Court or the Charity Commission unless:
- the disposal is made to a person who is neither a trustee or a 'connected person' (somebody who is connected to the trustees in some way); and
 - (in the case of a disposal of the nature proposed by this report) the disposal complies with the provisions of Section 119(1) of the Act.

- 3.12 Section 119(1) of the Charities Act 2011 provides that, before disposing of any land, the trustees must:
- obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;
 - advertise the proposed disposal for such period and such manner as is advised in the surveyor's report (unless the surveyor's report advises that it would not be in the best interests of the charity to advertise the proposed disposal); and
 - decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposal is proposed to be made are the best that can reasonably be obtained for the charity.
- 3.13 Section 1 of the Trustee Act 2000 provides that trustees must exercise such care and skill as is reasonable in the circumstances, having particular regard to any special knowledge or experience which they have or hold themselves out as having and (if they are acting as a trustee in the course of a business or profession) to any special knowledge or experience that it is reasonable to expect them to have as a result of that business or profession.
- 3.14 Ward Members have had preliminary discussions about the possible disposal of the land with a number of house builders but as yet there has been no consultation with the local community. At this stage therefore it is not possible to say whether or not the requirements of the Charities Act 2011 and the Trustee Act 2000 will be met and it is proposed that a further report be presented to Executive Board about this in due course. Subject to Executive Board approving the principle of disposing of the charity's land it is proposed to commence consultations with the local community as to those proposals as soon as possible.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Subject to Executive Board approving the principle of the charity's land being sold, local residents will be consulted in respect of that proposal and the proposal to construct a playground on the charity's remaining land. A further report setting out the result of that consultation will be presented to Executive Board in due course.
- 4.1.2 This report has been prepared as a result of representations made by Ward Members for the Calverley and Farsley ward.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Modifying the purposes of the charity as set out in this report will enable the charity to provide assistance to a wider section of the community.

4.3 Council policies and City Priorities

4.3.1 Whilst Executive Board approval is being sought in relation to the activities of the charity, it should be noted that the proposed disposal of the charity's land will support the Council's 'Best Council Plan' objective of 'promoting sustainable and inclusive economic growth' priority of 'maximising housing growth to meet the needs of the city in line with the Core Strategy'.

4.4 Resources and value for money

4.4.1 Disposing of the charity's land will enable the charity to fulfil its objects more effectively and will also relieve the charity of any liability to maintain the land.

4.5 Legal Implications, Access to Information and Call In

4.5.1 In order to resolve that the purposes of the charity should be modified as set out in this report, members of Executive Board must be satisfied that it is expedient in the interests of the charity for its purposes to be so modified.

4.5.2 Provided that members of Executive Board are satisfied that it is expedient for the purposes of the charity to be modified as set out in this report, the consent of the Charity Commission is not required to make such modification. It should be noted though that a copy of any resolution to modify the purposes of the charity has to be submitted to the Charity Commission (who can then object to it) and will not in any event come into effect until 60 days after they have received it.

4.5.3 Unless the proposed disposal of the land owned by the charity complies with the requirements of the Charities Act 2011 an order of the Court or the Charity Commission will be required before the land can be disposed of.

4.6 Risk Management

4.6.1 If the purposes of the charity are not modified, the charity will be of little value to the local community. Similarly, if the charity's land is not disposed of, the charity will have very little money to make available for the benefit of the local community.

4.6.2 Legal Services have had some correspondence with the Charity Commission about modifying the purposes of the charity and whilst it is believed that the modification proposed in this report will be acceptable, there is a risk that the Charity Commission may object to it. If this happens, there will be an opportunity for further dialogue with the Charity Commission and if necessary a further report will be submitted to Executive Board.

4.6.3 The risks associated with the disposal of the charity's land are as follows:

- if the land is not disposed of, the charity will remain responsible for maintaining it;
- offers may be submitted for unacceptable uses – this will be addressed in negotiations with the prospective purchasers and in consultations with the local community;
- a purchaser may withdraw their offer before exchanging contracts for the purchase of the land – this is a risk on any property transaction.

5 Conclusions

- 5.1 Modifying the purposes of the charity will be beneficial to the local community and will enable the charity to operate in a more effective manner.
- 5.2 Disposing of part of the charity's land will generate funds which the charity can use to improve the lives of local people.

6 Recommendations

- 6.1 Executive Board is requested to note the contents of this report and (being satisfied that it is expedient in the interests of the charity for the purposes to be modified) to resolve that the trusts of the charity should be modified by replacing the existing purposes of the charity (the prevention or relief of poverty of residents of the former Manor of Calverley) with the new purposes of preventing or relieving need or hardship of persons living within the former Manor of Calverley. If this recommendation is approved the City Solicitor will notify the Charity Commission of the resolution within fourteen days.
- 6.2 Executive Board is also asked to approve the principle of disposing of the land charity's land at Dawson's corner, retaining sufficient land to construct a playground, subject to the necessary consultation with the local community and to a report setting out the detailed proposals being submitted to Executive Board in due course. If this recommendation is approved the City Solicitor and the Director of City Development will liaise with Ward Members as to the exact nature of the proposals and the required consultation with a view to submitting a further report to Executive Board within the next six months.

7 Background documents¹

- 7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.