

MAINDY PARK TRUST ADVISORY COMMITTEE

DECISION REPORT

In relation to: Proposed Land Exchange

1. INTRODUCTION

1.1 The Maindy Park Trust Advisory Committee was established, by resolution of Cardiff Council dated 29th September 2022, in order to manage its conflict of interests in relation to Maindy Park, arising from its role as sole corporate trustee of Maindy Park, a charity registered with the Charity Commission under Charity Number 524137 (“the Charity” or the “the Trust”) with the objects to use the land for recreation, playground and open space; and the Council’s proposals as Local Education Authority to expand Cathays High School, situated opposite the Charity land, which would require part of Maindy Park to be released for this project.

1.2 The agreed terms of reference for the Advisory Committee are:

- a) to consider whether the land exchange proposed by Cardiff Council in its statutory capacity as local authority should be agreed by the Maindy Park Trust (‘the Charity’), having regard to the best interests of the Charity and its beneficiaries, and all relevant evidence in this respect, including (but without limitation to) independent valuation advice on the relevant land and views submitted in response to the public consultation on this matter; and
- b) to make a recommendation to Cabinet, in its capacity as Trustee of the Charity, on whether or not the proposed land exchange should be agreed (subject to approval by the Charity Commission).

2. DECISION MAKING PROCESS

2.1 The Advisory Committee was established, comprised of three independent members of the Standards and Ethics Committee of the Council: Jason Bartlett (Chair), Arthur Hallett and David Mills.

2.2 The Committee met on 12th October 2022, 17th November 2022 and 23rd January 2023 to consider this matter. At each meeting, the Committee:

- (i) considered a report from the Director of Governance and Legal Services (who was not involved in advising on the school redevelopment proposals), providing the Committee with relevant and requested information [[Item 5 - Committee Report.pdf \(moderngov.co.uk\)](#) [Item 4 Report.pdf \(moderngov.co.uk\)](#) [Item 4 Report.pdf \(moderngov.co.uk\)](#)], along with advice on Council decision making processes and Committee procedures;
- (ii) received written and oral representations made on behalf of various interested community groups, including the Save Maindy Velodrome Campaign Group,

the Association of the Beneficiaries of the Covenanted Land at Maindy Park, Cardiff Civic Society and the Vulnerable Users of Maindy Park Group;

- (iii) sought information and clarification from Council officers from Estates, Finance and Legal Services; and
- (iv) was advised by an independent qualified surveyor and valuer (from Cook and Arkwright) and an independent charity law specialist (from Geldards Solicitors).

2.3 The information considered by the Committee included the following:

- (i) The governing documents of the Charity (Indenture dated 15th August 1922 and Charity Commission Scheme dated 10th March 1988);
- (ii) Plans of the Charity's land at Maindy Park and the proposed exchange land at Blackweir and Cae Delyn Park, as updated during the process of considering the proposals;
- (iii) Site inspections of all 3 sites;
- (iv) Reports of the independent Qualified Surveyor on the proposals, including an addendum and an updated report to reflect revised plans for the proposed land exchange;
- (v) Two public consultation exercises, carried out firstly in May 2022 and then repeated in December 2022 (to seek views on the revised plans), and the outcomes of those consultations;
- (vi) An Equalities Impact Assessment, identifying equalities implications of the proposals (including a health and safety assessment), which was kept under review and updated on the basis of public consultation responses and representations received from the Vulnerable Users of Maindy Park Group;
- (vii) Oral and written representations from various interested community groups, who were given opportunities to submit their representations and any additional points to each of the three Committee meetings;
- (viii) Maps showing public recreation spaces in the surrounding areas of Gabalfa, Heath and Cathays;
- (ix) Data on incidents of crime, anti-social behaviour and public safety for all 3 sites (Maindy Park, Blackweir and Cae Delyn Park);
- (x) Specialist tax advice on the implications for the Trust of the proposed land exchange;
- (xi) The Charity's Annual Accounts for the year ended 31st March 2022; and
- (xii) The Accounts for Maindy Leisure Centre 2016-2022, which is operated by a third party, shared with the Committee on a confidential basis.

2.4 All Committee meetings were held in public and live webcast (except for the Committee's private discussions on possible decisions) and access to reports and associated documents was provided in accordance with the statutory rules set out in Part VA of the Local Government Act 1972 and the Council's Access to Information Procedure Rules (in Part 4 of the Constitution).

2.5 At the end of the Advisory Committee meeting on 23rd January 2023, after careful consideration of all the evidence (written and oral) presented to it over the course of the 3 Committee meetings, and their site visit, the Chair announced the decision of the Committee and the recommendations to be made to Cabinet, as Trustee of Maindy Park Trust.

3. DECISION AND RECOMMENDATIONS

3.1 The Advisory Committee decided that the proposed exchange of a portion of the land at Maindy Park ('the Maindy Exchange Land', shown in **Appendix 1**) in exchange for the land at Cae Delyn Park (shown in **Appendix 2**) *is* in the best interests of the Charity, *subject to compliance with the following 6 conditions:*

- (i) Condition One - The new velodrome is to be built and operational prior to the proposed land swap taking place.
- (ii) Condition Two - The terms and conditions recommended in the Qualified Surveyors updated report (**Appendix 3**) are to apply; including specifically in relation to overage provision - being 50% of the uplift in value to be paid to the Trust if the site is sold for future development during a period of 75 years from the date of the release of the restrictive covenant¹ (which would entitle the Trust to receive a share of any potential increase in value if an implementable planning permission is obtained for a higher value use of the land).
- (iii) Condition Three - Improvement works are to be carried out at Cae Delyn (including improved drainage of the site, walkways, lighting and other reasonable and proportionate measures to reduce anti-social behaviour in the area) and the retained land at Maindy, in order to improve its amenity value for the purposes of meeting the Trust's charitable objectives. The Advisory Committee is to hold another meeting (within 90 days from the date of its last meeting on 23rd January 2023) to agree the proposed recommended improvements, which may be subject to further public consultation. The Committee agreed, however, that the recommendations made at its January 2023 meeting could be reported to Cabinet before the date of the Committee's further meeting to consider the improvement works.
- (iv) Condition Four - Arrangements are to be made between the Trust and the Council for a lease or licence to be agreed to cover the future maintenance and management of the land at Cae Delyn and Maindy by the Council, with no ongoing revenue costs to the Trust which exceed income.

¹ Corrected to accurately reflect the terms of overage recommended by the Qualified Surveyor (the draft decision erroneously referred to the 75 year period running from the date of the land swap).

(v) Condition Five - The Council is to carry out a review of the governance and financial management arrangements of all trusts of which the Council is a trustee.

(vi) Condition Six - The provision of an information board on site at Maindy Park to explain the historic use of the site as a Velodrome.

3.2 The Advisory Committee recommended that the Cabinet, as Trustee, should approve the proposed land exchange, subject to the conditions set out above, and make an application to the Charity Commission for its consent to the land exchange on this basis.

4. REASONS

SUMMARY

4.1 The Advisory Committee announced a summary of the reasons for its decision at the end of its meeting on 23rd January 2023, as follows:

‘The land left at Maindy Park will provide a larger area of green space² than currently, and together with the land at Cae Delyn means there will be 2 areas of land for the benefit of all Cardiff residents which will benefit more people than having one specialist activity on one site and will be of a greater financial and amenity value, and therefore is in the best interests of the charity.’

FULL REASONS

The Committee’s Remit and Decision Making Process

4.2 The Committee noted that its role is to decide whether or not the proposed land exchange is in the best interests of the Charity, having regard to the charitable objectives of the Trust; and to make a recommendation to the Cabinet on whether or not the land exchange should be approved. The Cabinet, as Trustee, would make the final decision and this would be subject to approval by the Charity Commission.

4.3 In order to properly inform its decision, the Committee was provided with independent expert advice from a charity law specialist at Geldards Solicitors and a qualified surveyor and valuer from Cook and Arkwright. The Committee found there was no basis to the challenges made by certain community group representatives questioning the independence of the Trust’s expert advisors. Both advisors were bound by their respective professional codes and had confirmed they were engaged to advise the Trust in this matter, not the Council as developer, and had confirmed that they had no conflicts of interest in this matter.

² This refers to an increase in unrestricted access open space available for use by the local community.

- 4.4 In relation to the decision making process set up by the Council to manage its conflict of interests in this matter, the Committee noted that the Advisory Committee had been established in line with advice from Counsel and local government law, and the Trust's independent legal advisor had confirmed that this was a recognised and lawful method for managing the Council's conflict of interests. The Advisory Committee members reiterated their independence, as independent members of the Standards and Ethics Committee, and noted that the Committee was obliged to work within its terms of reference, and consider whether the proposed land exchange is in the best interests of the Trust.

Qualified Surveyor's Report & Valuation

- 4.5 The Committee noted that the qualified surveyor's report provided by the independent valuer, in line with charity law requirements, confirmed that the proposed land exchange (for the Maindy Exchange Land to be exchanged in return for land at Cae Delyn Park) represents an increase in the total land area and financial value of the Trust's land. The valuer's report also included certain recommendations in relation to the terms of the proposed land exchange (including those referenced in paragraphs 4.7 and 4.13 below), all of which the Committee agreed should be accepted in order to safeguard the interests of the Trust.
- 4.6 The Committee was satisfied, on the basis of advice provided by the independent valuer and its independent legal advisor, that it is correct for the valuation of the Maindy Exchange Land to take account of the restrictive covenant in place, which allows the land to be used for recreational purposes only, because the Trust does not control the restrictive covenant and it would remain on the land whether or not the land is exchanged.
- 4.7 However, the Committee also took account of the statutory powers available to the Council, as a local authority, to override a restrictive covenant in order to facilitate a development for which planning permission has been granted. It was agreed that the overage clause recommended by the valuer would ensure that the Trust would get a fair share (50%) of any uplift in value which may be triggered by the grant of an implementable planning permission for a higher value use permitted by the release of the restrictive covenant; and that this should apply for the full recommended term of 75 years.
- 4.8 In considering the financial value of the Maindy Exchange Land, the Committee was satisfied, having reviewed the accounts provided on a confidential basis by GLL, the third party leisure services provider, that there is no income due to the Trust arising from the current facilities on the land, because of the fact that expenditure exceeds income.

Proposed Alternative Land

- 4.9 The Committee considered the suitability of the proposed replacement land for use in meeting the Trust's charitable objectives, namely, for public recreation, playground and open space. The alternative land at Blackweir was rejected following the site visit carried out by the Committee members on 26th October 2022 and having regard to concerns raised by members of the public, because it was not considered to be a suitable replacement with sufficient amenity value.

- 4.10 The Committee then sought further information about the proposed alternative land at Cae Delyn Park. It was noted that the land consists of green space, grassed playing fields and surfaced footpath, all suitable for public recreation. The Committee welcomed the suggestion put forward by the Council's Parks Operational Manager, in relation to potential improvements to the sports pitches through drainage works, supply and installation of new posts and ground sockets; consideration of the provision of solar lighting; footpath improvements; and the provision of site furniture (such as park benches). The Committee also agreed that consideration should be given to reasonable and proportionate additional measures to address anti-social behaviour concerns, which had been raised by some members of the public. It was noted that any improvement works may be subject to public consultation and would require approval by the Council. The Committee decided that the suggested improvement works should be carried out to improve the amenity value of the land at Cae Delyn for public recreation and open space; and that the Council should be asked to prepare proposals for the improvement works for consideration and approval by the Committee at a future meeting to be held within 90 days. The Committee's decision in this regard is reflected in Condition Three set out in paragraph 3.1(iii) above.
- 4.11 The Committee agreed that, subject to the improvement works referred to in the paragraph above being carried out, the land at Cae Delyn would be potentially more suitable for wider range of leisure activities, with greater public access, than provided currently by the Maindy Exchange Land.
- 4.12 It was noted that, should the land exchange proceed, the Trust would need to make arrangements for the management and maintenance of the land at Cae Delyn Park, including the hire of sports pitches. The Committee welcomed the proposal made by Council officers that a lease arrangement could be put in place between the Trust and Council, for the Council to retain responsibility for management and maintenance of the land. In order to protect the financial position of the Trust, it was agreed that the arrangements should incur no ongoing revenue costs to the Trust which exceed its income (for example, from pitch hire). The Committee agreed that the arrangements for the management and maintenance of the land at Cae Delyn should be set as a condition for approval of the proposed land exchange, and agreed the terms set out in Condition Four.
- 4.13 The Committee was pleased to note that the proposed land exchange included 4.9 acres of the Trust's land at Maindy Park being retained by the Trust. The retained land includes the leisure centre and swimming pool, meaning that those recreational facilities would remain unaffected by the proposals. The revised plans (prepared in December 2022) also made provision securing public access to the Trust's retained land and space for public car parking in the evenings and at weekends. The Committee noted that the qualified surveyor's report included a recommendation that any agreement put in place between the Trust and the Council in relation to the proposed land exchange should include terms to this effect, which the Committee agreed would safeguard the Trust's interests.
- 4.14 It was noted that the Council's proposals included carrying out various improvement works to the Trust's retained land at Maindy Park (in relation to

issues such as lighting and accessibility, to be agreed in consultation with the local community) and would increase the unrestricted access open space available for use by the local community. The Committee agreed that these improvements would increase the amenity value of the retained land for the Trust's charitable objectives and should therefore be a condition of the land exchange. This is reflected in Condition Three of the Committee's recommendation (see paragraph 3.1(iii) above).

- 4.15 The Committee enquired about arrangements for future maintenance of the Trust's retained land at Maindy Park and was content to agree to the proposal that the current informal arrangements, whereby the Council maintains the footways, roads and parkland at no cost to the Trust, should be formalised and continued. This is reflected in Condition Four of the Committee's recommendation.
- 4.16 Consideration was given to the concern raised by some members of the public and community group representatives that the location of the proposed exchange land at Cae Delyn was too far from the current Trust land at Maindy Park to be an acceptable replacement. It was suggested that some current users of the land at Maindy Park, in particular individuals with mobility issues or other vulnerabilities, would be unfairly disadvantaged by the proposed land exchange. The Committee's legal advisor advised the Committee that the Trust's beneficiaries encompass all residents of Cardiff, and that there is no requirement for the replacement land to be in the Cathays ward or close to the current Trust land at Maindy Park. The Committee acknowledged that the land at Cae Delyn may be less convenient for current users of the land at Maindy Park, but felt this was counter-balanced by the fact that its location may be more convenient for other beneficiaries of the Trust living in other parts of Cardiff. The Committee was also reassured by the fact that just under 5 acres of land would be retained at Maindy Park, and improved at the Council's expense. This would ensure that current users of Maindy Park would still have close access to a large area of public recreation space.
- 4.17 The Committee also considered the suggestion made by objectors that the proposed land exchange would result in a net reduction in the area of green space in Cardiff, because the proposed alternative land at Cae Delyn is already open access parkland. The Committee was advised by its independent legal advisor that the total area of green space in Cardiff is not relevant to the charitable objectives of the Trust and that the Trustee's responsibility is in relation to the land it holds on trust. The Committee noted that if the proposed land exchange were approved, the land at Cae Delyn would be protected by placing it into trust. This meant that the proposed exchange would result in the Trust owning 2 public recreation spaces in different parts of Cardiff, which the Committee believed would be more accessible to a larger number of the Trust's beneficiaries.

Public Consultation

- 4.18 The Committee was satisfied that reasonable and proportionate efforts had been made to bring the land exchange proposals to the attention of members of the public and that all interested parties had been given sufficient opportunities to put their views forward. The range of measures undertaken included 2 public

notices published in a newspaper; three public meetings, which were accessible in person and online, with all meeting documentation published on the Council's website in accordance with the statutory public access rules (under the Local Government Act 1972, Part VA); opportunities given to all interested community groups to make written and oral representations to the Committee on three separate occasions; and a survey published on the Council's website and available in hard copy, carried out in December 2022, which received 785 responses. The proposals had also been well publicised locally by the active campaign groups.

- 4.19 The Committee was advised by the independent legal advisor that charity law places no legal obligation on Trustees to consult on a proposed land exchange, but that it is good practice to do so to ensure that the Trustee's decision is well informed. The Council's Director of Governance and Legal Services explained the Gunning Principles applicable to consultations carried out by public bodies, arising from their overriding duty to act fairly. The Committee was satisfied that the consultation undertaken complied with the Gunning principles, in that, it had been carried out when proposals were at a formative stage; had included sufficient information about the proposals; allowed sufficient time for response; and that all responses had been carefully considered by the Committee and taken into account.
- 4.20 The Committee noted that over 90% of respondents to the public consultation were not supportive of the proposed land exchange and that the majority of these were individuals living close to Maindy Park. The loss of the velodrome at Maindy was a recurrent concern raised by those objecting to the proposals (please see paragraphs 4.21 to 4.24 below). The concerns raised by respondents were carefully considered by the Committee and are addressed throughout this decision report. The independent legal advisor confirmed that, whilst the Trustees must carefully consider the concerns raised, it is the Trustees (and not the beneficiaries) who must decide what is in the best interests of the Trust, having regard to the interests of all those within the class of beneficiaries.

Maindy Velodrome

- 4.21 Careful consideration was given to the concerns raised by objectors about the loss of the velodrome at Maindy Park. The Committee heard the various representations made about the features and use of the current velodrome and concerns that the proposed new velodrome at the International Sports Village would not offer the same type of user facilities; and concerns about the decision making process in regard to plans for the new velodrome. The Committee was pleased to note the Council's stated commitment that the current velodrome would not close until the new velodrome was open, so that a velodrome cycling facility would be maintained in Cardiff without interruption. The Committee also asked Council Officers to provide clarification and assurance to concerned community groups to confirm that the new velodrome facility would be suitable for all ages and abilities.
- 4.22 The independent legal advisor confirmed, however, that provision of a velodrome is not a charitable objective of the Trust, meaning that there is no obligation on the Trust to have a velodrome on its land; and there is no obligation to exchange 'like for like'. A velodrome offers recreational facilities, but it is not

the only way of providing recreational facilities. It was noted that consideration of issues relating to the design of the new velodrome (including the degree of banking / slope) does not fall within the Committee's terms of reference. However, the Committee agreed that any access issues relating to the design of the new velodrome would be considered as part of the Equalities Impact Assessment of the proposed land exchange (please see paragraph 4.25 below).

- 4.23 For the purposes of the Trust's decision, the Committee was advised that the velodrome at Maindy Park should be regarded as a facility on the Trust's land. The Committee therefore considered how this facility helps to meet the charitable objectives of the Trust and weighed this against the recreational and open space facilities which the Trust could provide if the proposed land exchange were to proceed. It was noted that the velodrome is a well-used and valued facility, which contributes to the recreational amenity value of the Trust's land at Maindy Park. In recognition of the amenity value of a velodrome cycling facility for the city of Cardiff, the Committee agreed that they could only be satisfied that the proposed exchange would be in the best interests of the Trust if a velodrome was provided elsewhere in the city, in line with the Council's commitment, before the land exchange takes place. This is reflected in Condition One to the Committee's recommendation.
- 4.24 The Committee also considered the concerns raised about the historic value of the velodrome at Maindy Park. It noted, however, that the velodrome is not a listed structure and the advice of the independent legal advisor was that the preservation of historic structures does not fall within the charitable objectives of the Trust and is therefore not a relevant consideration for the Trustee's decision on the proposed land exchange. Nevertheless, the Committee agreed that it would recommend the installation of an information board or commemorative plaque on site at Maindy Park to explain the historic use of the site as a velodrome. This is set out in Condition Six to the Committee's recommendation.

Equalities Issues

- 4.25 The Committee was keen to ensure that it heard and took account of all relevant views, including those of vulnerable groups and groups sharing protected characteristics under the Equality Act 2010. The advice of the independent legal advisor was that charity law does not impose a legal duty on Trustees to take equalities considerations into account, but that it would be reasonable for the Trustees to do so. As a matter of good practice, an Equalities Impact Assessment (EIA) was therefore carried out, with advice from the Council's Equalities Officer, to assess any equalities implications of the proposed land exchange. The EIA was updated over the course of the Committee's consideration of this matter, to take account of all representations made to the Committee and in response to the public consultation carried out in December 2022. Representations made by the Vulnerable Users of Maindy Park Group were considered by the Committee, and the offer was made for any individuals who wished to speak with the Council's Equalities Officer or make representations through an appropriate equalities group. The EIA also included an assessment of any equalities implications of the design of the new velodrome. The outcomes of the EIA, which included a health and safety assessment of the

proposed exchange land, are reflected in the Committee's recommendations in relation to improvements required to be made to the land at Cae Delyn Park and also the retained land at Maindy Park (under Condition Three, set out in paragraph 3.1(iii) above).

Issues Not Considered Relevant

4.26 In line with the advice of the independent legal advisor, the Committee agreed that the following issues were not relevant factors to be taken into account in its decision:

- (i) The Cathays High School development proposals, which have been approved by the Council, subject to resolution of the trust and other land issues. The need for the school expansion, alternative land which may or may not be available and the decision making process for the school development was not considered relevant to the Trust Decision nor within the terms of reference of the Committee.
- (ii) The Council's economic regeneration plans, the International Sports Village development and the new velodrome proposals were not considered relevant to the Committee's decision, except to the extent set out in paragraphs 4.21 to 4.23 above, and played no part in the Committee's decision.
- (iii) The Council's reasons for the proposed land swap were considered irrelevant for the purposes of considering what is in the best interests of the Trust, having regard to its charitable objectives.

Conditions for Approval of Proposed Land Exchange

4.27 The Advisory Committee recommended that the land exchange should only be approved subject to satisfaction of the six conditions set out in paragraph 3.1 above, intended to protect and promote the best interests of the Charity and its beneficiaries. If these conditions are not met, the Committee's view is that the proposed land exchange should not proceed, unless further consideration is given to any modifications.

General Review of Trust Governance

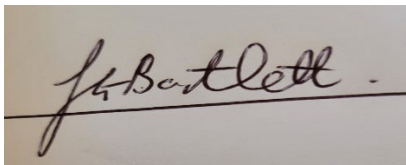
4.28 The Committee noted the difficulties that had arisen in this case from the fact that the trust status of the land at Maindy Park had not been identified at the outset of the school development project. The independent legal advisor confirmed that, unfortunately, this was not unusual for local authorities who may have historically been gifted land for charitable purposes, without any express trust deed, nor any entry at the Land Registry to indicate the existence of the trust. In order to avoid such difficulties in future, the Committee recommended that a review should be undertaken by the Council of the governance and financial management arrangements of all trusts of which the Council is a trustee. The review should seek to identify any necessary improvements to be agreed and put

in place. This is reflected in Condition Five to the Committee's recommendation.

WRITTEN DECISION

A copy of this decision report is to be provided to the Council and the community groups who submitted representations on this matter, and published on the Council's website alongside the minutes of the January 2023 Committee meeting at which the decision was announced.

SIGNED ON BEHALF OF
THE MAINDY PARK TRUST ADVISORY COMMITTEE

A photograph of a handwritten signature in black ink on a light-colored background. The signature reads "J. Bartlett" in a cursive style, with a horizontal line drawn underneath the name.

JASON BARTLETT
CHAIRPERSON

22nd February 2023

APPENDICES

Appendix 1	Maindy Park – Proposed Land Exchange Layout (modern.gov.co.uk)
Appendix 2	Cae Delyn Park – Proposed Land Exchange Layout (modern.gov.co.uk)
Appendix 3	Qualified Surveyor's Report Appendix E.pdf (modern.gov.co.uk)