

# MAINDY PARK TRUST ADVISORY COMMITTEE

12 OCTOBER 2022

Present: Independent Members:

Jason Bartlett, Arthur Hallett and David Mills

1 : ELECTION OF CHAIR

RESOLVED: That Jason Bartlett be appointed Chairperson

It was noted that the following were also present:

Davina Fiore	Director of Governance & Legal Services and Monitoring Officer, Cardiff Council
Donna Jones	Assistant Director, County Estates, Cardiff Council
Eirian Jones	Operational Manager, Estates, Cardiff Council
Richard Crane	Principal Solicitor, Property, Cardiff Council
Kumi Ariyadasa	Governance Solicitor, Cardiff Council
Harriet Morgan	Geldard's, Solicitors
Elizabeth Hill	Valuer, Cooke & Arkwright

2 : APOLOGIES FOR ABSENCE

No apologies for absence were received.

3 : DECLARATIONS OF INTEREST

No declarations of interest were received

4 : TERMS OF REFERENCE

RESOLVED: To note the Committee's Terms of Reference

5 : PROPOSED LAND EXCHANGE AT MAINDY PARK

The Chairperson welcomed everyone and asked the Committee members and advisors present to introduce themselves.

He explained the purpose for the meeting: to provide the Committee with the opportunity to consider the proposed exchange of trust land at Maindy Park and provide a recommendation to Cabinet, acting as Trustee of Maindy Park, as to whether the proposed land exchange is in the best interests of the charity.

He explained that after the meeting there would be an adjournment and a further Committee meeting would be arranged, partly to allow the Members to carry out a site visit. He outlined the process for the meeting and the opportunity to be given to representative groups to make representations to the Committee.

The Director of Governance & Legal Services explained that the Committee had agreed that representative groups would be given 10 minutes each to make

submissions today, but would not hear from individual members of the public, in order to manage the time of the Committee effectively. An individual member of the public had asked if they could make a representation on behalf of vulnerable users of Maindy Park and had been advised that the individual could either provide written representations to be passed to the Committee or make sure the representative groups could put the representations on their behalf. It was noted that as there is likely to be a further meeting, there could be further discussion in relation to the representations to be heard. It was also suggested that the individual may wish to speak to the Council's Equality Officer (who would be asked to make contact), and it was emphasised that the Committee do want to ensure representations from vulnerable users are heard.

The Chair confirmed that the report and all written information presented had been read. The Panel had no questions on the information presented at that stage.

Mr Warland, Chair, Association of the Beneficiaries of the Covenanted Land at Maindy Park was invited to make his oral representations to the Committee. He said that whilst they do not feel that they have had sufficient time to brief the Committee on all of the important issues and concerns that have been identified, he wished to highlight the following points:

He said the reason for the land swap is to save the Council money. According to an email from a Council officer, moving the cycle track negates the need to acquire land which is costly in the city. It is not about the benefit to the charity or to the people of Cardiff to whom this gift of land was left, it is purely for the monetary benefit of the Council itself, as the Council could stand to benefit financially in the sum of £10 million. Charity law and regulatory guidance makes clear that such a considerable financial benefit to a trustee, in this case Cardiff Council is the sole trustee, is not permitted and as such this land-swap should not be approved.

They believed that, as it has now been conceded that a conflict of interest exists, every decision made since last summer, including instructing a land agent to conduct valuations, is tainted by this conflict and likely to make any other decisions and recommendations subject to legal challenge.

The Council is not listening to the beneficiaries. Over 100 people attended a public meeting in June of this year. Labour Members of the Council declined the invitation, stating that the decision to expand the school had already been made. Liberal Democrat representatives from Gabalfa did attend. There was no support for the scheme at the meeting, in fact, many seemed confused and felt there was a lack of clear communication from, and information provided by, the Council. The land swap consultation showed 98% of 253 individuals who had responded, objected to the land swap.

It is not accepted that the proposal offers land which is the equivalent of that at Maindy Park. Photographs show that Blackweir is inaccessible to wheelchairs and those with other mobility problems. It is also likely that those with prams, pushchairs and buggies would struggle with the steps, steep grassy banks and lack of path. There is also no lighting, and reference was made to a sexual assault which took place in broad daylight by Blackweir Bridge just a short distance from this land and the homophobic murder of Dr Gary Jenkins in Bute Park.

Residents and users of Maindy Park have expressed concern at the potential loss of a safe, local, well used and well lit place to walk, particularly in dark evenings over winter months. Caedelyn also has similar access problems; it is 2.1 miles away, which is not readily accessible for residents local to Maindy; and lack of lighting and the high level of pedestrian traffic also make it unsuitable for vulnerable users.

Cardiff has one of the lowest proportions of green space compared to overall land area for UK cities of a similar size. The charity was set up with the purpose of protecting Maindy Park for recreation and leisure time use by the people of Cardiff in perpetuity. Swapping the land for another site further reduces the amount of green space available for Cardiff residents.

Land exists elsewhere that could be purchased for the school; a Freedom of Information request shows the Council has not fully explored the use of Companies House and has not explored it at all since early 2020.

Mr Warland requested that the Committee considers visiting the sites involved.

The following further information was provided as a result of questions from the Committee:

Members queried how they had arrived at the figure of £10 million being the benefit to the Council and were advised that the Association had estimated that the land at Maindy was worth in excess of that if developed for residential purposes bearing in mind the guide price of a plot land adjacent to Maindy Park which was sold recently for approximately £1,400 per square metre. Only a third of the 21,000 square metres could be developed and therefore they had estimated it was worth £10 million.

If the land did not have the restricted covenant, it could in theory be developed by the Council or sold to a developer.

Members were advised by the valuer that the valuation takes into account the covenant being in place and that would stand even if the land was swapped.

Mr Lewis (Save Maindy Velodrome) asked whether the intention was to leave the covenant in place, and was advised that the Trust does not control the covenant. Ms Morgan (Geldards Solicitors) advised that the land is held on trust for the purposes mentioned and that there is a restrictive covenant on the land to the same effect, but they are in fact different. The Trust could only deal with the trust element of the land and the restrictive covenant on use would remain on the land. It would be for the Council's lawyers to deal with the restrictive covenant.

Mr Lewis also commented that it was his understanding that Crown Way is still covered by the covenant and was advised by officers that that understanding was correct. The charity's land originally extended much further than what's currently there. In the early 1970's, the Council obtained an order from the Secretary of State, on behalf of the Charity Commission, to authorise that those parcels of land were released from the charity in exchange for monetary compensation, which is now held as investments by the Council as Trustee. Officers were not aware of whether or not the covenants were released by the Marquis of Bute or whether the Council paid

additional compensation to the Marquis. It had not been possible to find any documents in relation to that.

Officers explained that there are a number of options open to parties who wish to deal with a restrictive covenant. Discussing a release is one way to do it. If there is a release of a covenant, there would be a document entered into between the person who gave the covenant and the beneficiary which would then be recorded on the title. Another way to do it would be to get indemnity insurance policy in case somebody made a claim. The third option, which is beneficial for us as a Council, is that we have powers under the Town and Country Planning Act to be able to override covenants to be able to facilitate a development for which we've got planning permission. If we use statutory powers under the Town and Country Planning Act, the covenant still sits there, but the statutory law overrides it, so it means that is not of any applicable use any longer, while that planning permission is in place. It was assumed these statutory powers had been relied on in this case. Using the example of Crown Way, if the road was removed and planning permission obtained for something else, the covenant would kick back in.

Mr Alan Davis, Save Maindy Velodrome, was invited to make representations. He indicated that he wished to speak specifically about the actual velodrome, how it is used and the suggested replacement in the Bay.

Mr Davis provided some background information in relation to his involvement with Maindy Flyers and the Maindy velodrome; his involvement with the Welsh Cycling Board and general information about the track, namely it is a 500 yard, shallow banked tarmac velodrome which can be used by track and road bikes. It is predominantly used by those riding road bikes. Due to shallow banking, it means that the track can remain open and rideable unless it freezes. Half of the current use is by those under 18, and of that figure about 25% are under 9.

Mr Davis expressed a number of concerns about the proposed new velodrome, including its location; the lack of consultation with Maindy Flyers about its location; and the nature of the track. The track proposed is a 333 m track with a banking of 28 degrees, which would mean that it would only be suitable for fixed wheel or track bikes because it would not provide enough clearance between the ground and the pedal for a road bike. Maindy is approximately 18 degrees. Tracks with a banking of 24 degrees and above only allow fixed wheel bikes, have age restrictions and close in the rain. There are no other 333 m outside tracks in Britain.

It is understood the velodrome at Maindy will not be closed until the new velodrome is open, however, the new velodrome will not replace what we currently have at Maindy and there is no promise to build the closed road circuit before the closure of Maindy.

Mr Davis referred to the various Olympic and Commonwealth Games medallists who have all started at Maindy; the coaching of young children learning to ride sessions, families with young children just riding around the track on normal bikes, and the Maindy Flyers sessions, the majority of whom were under 9 and were riding normal bikes. None of this will be possible in Cardiff Bay because of the proposed banking of the track and the fact that it will be fenced off to the public. The designs for the track in Cardiff Bay will mean that it will become an elitist cycling track for people at

the top end and will put it in direct competition with the track at Newport, which has a roof.

Ms Christine Wyatt (Save Maindy Velodrome) referred to a recent FOI request, confirming that the Council have confirmed the banking of the new velodrome will be 28 degrees, so suitable for track bikes only, excluding most of the current users and the cycling community

Members sought clarification of officers as to whether the new velodrome will allow for use by track and road bikes. Officers confirmed their understanding is that the specification allows for both road and track use and that it is no more than 28 degrees.

Mr Davis advised that concerns had been raised previously with the Council and Councillors on that point. There was also a meeting with the Project Team where the same concerns were discussed, and officers at that meeting advised that further inquiries would be made and a response provided. That has not been received. He said a key issue is that British Cycling will not be able to get insurance cover for coaches that coach on a track, which because of the banking being 28 degrees, can only be used for track bikes.

The Chair advised that the committee would consider the points raised and that further clarification would be sought. The Director confirmed that clarification would be sought, but also advised that the role of the committee is to reach a recommendation on the proposed land swap and whether that is in the best interests of the Trust and the Committee would need to consider whether the points raised are relevant to its decision.

Mr Davis suggested that consideration should be given to the current use of Maindy and a comparison with the proposed land to be swapped for it, to see that there is access for it to be used in a similar fashion, because that is what the covenant has decreed the land should be used for.

Harriet Morgan advised that, whilst the velodrome that is currently there does fall within recreation and therefore the Trust is able to have a velodrome on its land, the Trust does not say there has to be a velodrome on its land. What the Trustees have to decide is whether, in the land-swap, recreation is provided to the beneficiaries. That doesn't have to be a velodrome. From the Trustees point of view and to comply with their Trust, it does not have to be 'like for like'. Mr Davis accepted that it is not mandatory for the Trust to provide a velodrome, but suggested that the new site should provide a similar level of recreation, not necessarily in a specific sport.

Mr Lewis asked for information in relation to the date upon which the Trust was setup up, believing it to be 1966. The Committee were advised that the Indenture is dated 1922 and that the Indenture is the Trust Deed which sets up the trust. Whilst the Charity was registered on a later date, it is still a charitable trust from 1922 and that even if the velodrome was in place at the time the charity was registered, from the point of view of the requirements of the Trust, it does not have to include a velodrome, despite the fact that the velodrome was there at the point of registration. The Trust was set up in 1922 for recreation and park and that is the basis on which

the land must be used. The obligation of the Trustees is to ensure that the purposes of providing recreation for the beneficiaries and park spaces is met, it is not to provide necessarily like-for-like from what's currently there.

Christine Wyatt, was invited to make representations on behalf of Cardiff Civic Society, and outlined a number of points:

The land being offered is worthless to the beneficiaries as it is already open access parkland with the same or greater levels of protection than Maindy. If agreed, the land swap would result in a net loss of open access green space for Cardiff as a whole, in addition to the loss of parkland and facilities in the Cathays area; however, the Council would benefit by millions of pounds.

The consultation was run despite Cardiff Council knowing that the area of charity land required for the land swap is yet to be finalised. This makes the maps and land descriptions provided for the consultation worthless, as respondents were not given final and accurate information detailing the exact area covered by the swap proposals. Therefore, it was not possible to make a fully informed decision.

The proposed Maindy Park Trust can only operate within its charitable purpose and objectives as set out in its governing documents. On 14 October 2021 Cabinet resolved to use the Charity's land for education purposes, which is not permitted under the Charity's purpose.

If the land swap is approved, there will be a net loss of open access space available for recreation or other leisure for the inhabitants of Cardiff and this cannot be compatible with the charity's objectives.

The two parcels of land proposed for the land swap by Cardiff Council are already open space for the public to use, so there is no gain for the beneficiaries, only a net loss. The Committee were provided with a copy of the notice displayed at Maindy Park which confirms that Maindy Park is subject to a Public Space Protection Order, and the plan confirms the whole of Maindy Park is therefore a public space.

There is there is no mechanism for disposing of the land in the charity's governing documents because the charity was set up solely to look after the land, not any piece of land but this specific piece of land. The governing document does not say that charity land can be provided elsewhere in Cardiff. It evidences the gift encompasses land located within Cathays ward.

The valuation of Maindy has been based on the restrictive covenant remaining in place, which is incorrect, because the land swap would remove the covenant and render the site available for development. If the land swap goes ahead, based on the current incorrect valuation, the charity and beneficiaries stand to lose out on millions of pounds, unless a true valuation closer to the full market rate is applied.

There has been huge opposition by the beneficiaries to the Council's proposals to expand on to the Charity's land, with over 4,000 signing a petition, 500 objections to the school expansion and 98% opposing the land swap. The message from the beneficiaries has been quite clear, yet still the Council has ploughed on with their

agenda regardless, which is clear evidence of a conflict of interest for the corporate body.

The only reason that this meeting has been arranged is because the council's proposals incorrectly state that there is a requirement to expand the school and they wish to take the charity land to facilitate this expansion. It is not accepted that there is a requirement to expand the school. Local demand is static at around 400 pupils the expansion has only been proposed in order to take more pupils from outside of the community and catchment area. Both Estyn, and the council's own scrutiny committee did not agree with the logic behind the Council's proposal to expand the size of the school.

The Velodrome itself has been found to be unsuitable for construction of a school building. No details have been provided to show where the Council intends to site the school building or if there is anywhere on the Maindy Park site suitable for the construction of a building that can accommodate 1,400 pupils.

Harriet Morgan advised the Committee in relation to the points raised in relation to the charity purpose. The charitable purpose is set out in the Trust Deed which is available on the Charity Commission website. There is no mechanism for disposing of the land in the Trust Deed, but that is not uncommon for Trusts of this age, and there is a statutory power of sale for charities, which we are advising the Trustees they would be able to use.

Ms Wyatt queried why the Council would need to resort to using statutory powers to dispose of the land when clearly the beneficiaries do not agree with the land swap. Ms Morgan explained that it is the Trustees who must make any decisions in respect of disposal and not the beneficiaries, and the Trustees must act in the best interests of the Charity. The statutory power is open to all Charities and Charity Trustees, if they decide if it is appropriate, and the Charity Commission will need to give their consent to this application.

Mr Lewis (Save Maindy Velodrome) said that the problem here is that Cardiff Council have not set up an arm's length management structure, in accordance with the Guidance for Councils, and said all the revenues should all be going through the Trustee bank account. Harriet Morgan advised that there is Charity Commission guidance about how Local Authorities should act in circumstances where there is an inherent conflict of interest, which is not unusual where councils are the Trustees of Charities, and that is why this Advisory Committee has been set up. They are independent and this is how the Charity Commission have advised councils to manage such a conflict of interest, and that is the process that is currently being gone through. After the Advisory Committee process, if the land swap is pursued, consent would be required from the Charity Commission itself, because of the conflict of interest.

Christine Wyatt indicated that, in her opinion, the Advisory Committee was not managing the conflict, because the Committee cannot make a decision, it can only make a recommendation to Cabinet, where there are four conflicted members, who are 'not significantly conflicted', who make the decision. Ms Morgan explained that this is why the Charity Commission's consent would also be required, because there is a 'connected person' here and a conflict of interest. Under charity law, the

Advisory Committee cannot make the decision, because the Council, as the body corporate, is the Trustee and the Trustee must make the decision; and then Charity Commission consent is required.

Andrew Wyatt (Save Maindy Velodrome) suggested that the best way of dealing with the conflict issue would have been to appoint, or have the Charity Commission appoint, independent trustees; and asked why this had not been done. He suggested the reason was that this would remove the Council's control over the land. Harriet Morgan advised that the trustees took Counsel's opinion on how to deal with the conflicts issue and is acting in line with that Counsel's opinion. Mr Wyatt asked if the beneficiaries could have sight of Counsel's opinion. Ms Morgan responded that the Charity trustees are not obliged to provide such information to beneficiaries. The Director advised that the Council and the Charity Trustees are entitled to take confidential legal advice. She explained that Counsel's advice covers a range of different issues, which it would not appropriate to share externally. However, she confirmed that relevant information had been provided as to what Counsel's advice says and emphasised that the three members of the Advisory Committee are independent of the Council and there is no restriction on them in terms of the information they may ask for in order to make their decision. All the members have gone through a rigorous process to be recruited to the Standards and Ethics Committee and they are experienced in dealing with ethical issues.

The Chair confirmed and reiterated the independence of all the Advisory Committee members.

Andrew Wyatt sought clarification as to whether the legal and valuation advice received were obtained by the Council in its capacity as developer or in its capacity as trustee of the Maindy Park Charity. The valuer, Elizabeth Hill, advised that she is advising the Council as the trustee and not as developer, and this is set out in her report. Harriet Morgan confirmed she is also specifically advising the trustees; and the trustee is the Council as a body corporate. She confirmed that she is advising the trustee on the process and she is satisfied that the trustees are using the correct processes to manage the conflict of interest that exists.

Claire Richardson asked how the Committee was appointed, bearing in mind that the Committee is made up of white middle aged men, with no female or person of colour representatives. The Director advised that there is one female member of the Standards & Ethics Committee at the moment, with one due to start shortly. She confirmed that the female member had been asked to sit on the Committee, but was unavailable due to other commitments and did not wish to be considered further. It was considered most appropriate to appoint from the independent members of the Standards & Ethics Committee because the conflict of interests is an ethical issue, rather than a financial governance or audit issue.

Claire Richardson indicated that she would like make representations on behalf of vulnerable users to the independent members of the Advisory Committee, but did not want to go through the Equality and Diversity Officer, as he is a Council officer and therefore, conflicted, in her view.

The Chair noted the request and said the Committee would consider this. The Director also suggested that representations could be made through an appropriate

equalities group. She confirmed that the Council would seek to facilitate arrangements for Ms Richardson to put her representations forward, but also emphasised that, aside from those officers involved in the redevelopment proposals, not all Council officers have a conflict of interests in this matter, for example, the Equalities Officer has no conflict, his role is to make sure that any impacts on people with protected characteristics are taken into account and this role is carried out diligently.

The Chair confirmed that consideration would be given to receiving representations on behalf of vulnerable users, and concerns raised in correspondence in relation to methodology and accessibility of the public consultation, and invited any further representations on these issues.

Clare Richardson advised that a new group has been set up, the Vulnerable Users for Maindy Park, and asked if a representative of that group could address the Committee at the next meeting. The Chair agreed this would be considered and the Director confirmed that the arrangements would seek to ensure representations could be made, without unnecessary duplication.

The Chair indicated that the Committee had no further questions at this stage and opened the floor to any further questions.

Christine Wyatt again queried the valuation of the land, saying that the Charity and the beneficiaries would lose millions of pounds on the value of the land if the restrictive covenant were lifted to permit development. The Chair indicated that this issue had been dealt with earlier, but asked the valuer, Elizabeth Hill, if she could respond to this. Ms Hill explained that the covenant is not controlled by the Trust, it is controlled by a third party, the Marquis of Bute and the Trust do not have the right to get it lifted. The residue of the Bute estate has been sold to a private company and they would normally expect a person to pay to have a covenant lifted. As a charitable trust, the trustees do not have control over the restrictive covenant. There may be other options available to the Council with regard to covenants, but any other organisation would have to approach those that now hold the residue of the Bute estate and negotiate out of the covenant.

The valuation provided for the Trust reflects the land being subject to a restriction which only allows it to be used for recreational purposes. If the covenant were lifted, the value of the land would depend on what planning consent was in place, but the valuer could only advise the trustees in respect of the land which they currently hold.

Harriet Morgan advised that the issue the Committee has to advise the Trustees on is, is it in the best interests of the charity to engage in the land swap. One of the things that the trustees and this committee may want to consider is future use of that land, but that is not a decision that this Committee or the Trust can take at this stage. In response to Ms Wyatt's question, Ms Morgan again confirmed that she was engaged to advise the Council as Trustee, not as developer.

Clare Richardson asked the Committee whether they would commit to reading in full all responses to the consultation and not just the 2 page summary provided at Appendix 6, including those submitted by those with protected characteristics. The Director advised that the Chair had indicated that he would be prepared to do this,

after redaction of personal information. The Chair confirmed that the Committee would discuss the matter further.

The Chair thanked everyone for their attendance and indicated that the date of the next meeting of the Committee would be provided in due course.

The meeting terminated at 3.40 pm