

MAINDY PARK TRUST ADVISORY COMMITTEE

23 JANUARY 2023

Present: Independent Members Jason Bartlett(Chairperson)
Arthur Hallett and David Mills

10 : APOLOGIES FOR ABSENCE

No apologies for absence were received.

The following were also present:

Davina Fiore	Director, Governance and 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
Ian Allwood	Head of Finance, Cardiff Council
Kumi Ariyadasa	Governance Solicitor, Cardiff, Council
Harriet Morgan	Geldard's Solicitors
Elizabeth Hill	Valuer, Cooke & Arkwright

11 : DECLARATIONS OF INTEREST

No declarations of interest were received.

12 : MINUTES

The minutes of the last meeting of the Committee were approved as a correct record of the meeting.

13 : PROPOSED LAND EXCHANGE AT MAINDY PARK - ADDITIONAL FURTHER INFORMATION

The report enabled the Committee to consider the responses to various matters of clarification which had been requested at the November Committee meeting; Appendices C, C1, D, D1, E and F.

The Committee had agreed that further oral submissions could be made to raise any additional points.

Mr Chris Lewis, speaking on behalf of Save Maindy Velodrome and ABC Maindy Park, was invited to make oral representations to the Committee. He outlined his frustration that sufficient time had not been allowed to enable a full review of the published documents prior to the hearing, but said there were a number of matters he wanted to raise:

Firstly, he said the most recent consultation shows that the beneficiaries of the trust are overwhelmingly against the land swap proposal, and that it shows, because of the inclusion of post codes and a map, that it is not just residents of Maindy who are against the proposal. Mr Lewis was advised that the results of the consultation and

the Equalities Impact Assessment are factors to be considered into consideration. He was further reassured that throughout the process the Council has tried to be open and honest and that the decision that the Committee reaches would be part of the process of trying to find a resolution one way or another to what has been a quite difficult situation to resolve. Where questions have been relevant, responses have been provided, but it is for the Committee to decide whether they feel the relevant questions have been answered satisfactorily. And should the Committee require further information to be provided before reaching a decision, the hearing would be adjourned for that further information to be provided.

The Chair confirmed that the results from the survey have been provided to the Committee and the Committee has had the opportunity to raise any concerns or questions they have had with Officers.

Mr Lewis commented that despite the secrecy 93% of the residents of Cardiff did not want the land swap and it would be wrong to go against those views. Mr Lewis was advised that it was consultation and not a referendum, it asked for people's views which are then taken into account as opposed to them voting. It was not accepted that this was a secret consultation; the Advisory Committee process had already started; he and others had attended to speak on behalf of objectors so whilst there may not have been as many posters out and more information in the community, a number of groups had already had the opportunity of speaking to the Committee who will make the recommendation to Cabinet. It is a balance of different measures. Whilst an apology was given to Mr Lewis as he had not been personally notified of the consultation, he was advised that he was already a part of the process and that his views and the views of the people from the organisation he represents were already known to the Committee and are being taken into account. The beneficiaries of the Charity are all the people of Cardiff and all of those have had the opportunity to respond; there have been consultations taken place on different occasions; these committee meetings, which are public meetings; and information on the website.

Mr Lewis queried whether the Council's economic regeneration plans for Cardiff Bay and the Council's education plans will form part of the Committee's considerations in respect of the land swap, and also asked, when the Committee is considering what is in the best interests of the Charity and Beneficiaries, what factors will be used to determine best interests.

Mr Lewis was advised that the Council's economic regeneration do not form part of the Committee's consideration.

In relation to the determination of best interests, Mr Lewis was advised that there is no definitive list of what is in the best interest of the charity, it is a decision for the trustees of each individual charity to make.

Mr Lewis asked the Committee to explain, on the basis of the first sentence of paragraph 11, Appendix A to the report, namely that the proposed use of part of Maindy Park for the school expansion is not compatible with the objects of the Maindy Park Trust (to use the land for recreation, playground and open space), how the Trustee can meet that objective if the main land is no longer in their possession, and how that is in the best interest of the charity. He was advised that the school expansion is not compatible with the trust, and that is why the land swap is proposed.

It was confirmed that if the trust land remains within the trust it cannot be used for educational purposes.

Mr Sparks, speaking on behalf of the Vulnerable Users of Maindy Park Group commented that whilst it would be correct to say that education and regeneration considerations do not fall within the Committee's remit, if the Council had not proposed to build a school on this land, the Committee would not have to make this decision. The idea has come from the Council and not the trust. Mr Sparks was advised that the trust has been asked to consider whether or not it is willing to make a land swap; it does not consider the Council's reasons for requesting the land swap, it just considers whether it would be in the best interests of the Charity.

Mr Lewis said he believes that the Council, as the trustee, is doing the legal bare minimum and he did not believe that Maindy Park Trust would support the reduction in the net area of parkland in Cardiff.

It was submitted by Mr Lewis that in accordance with Committee's terms of reference Maindy Velodrome itself, which is a wonderful, much loved historic and unique velodrome should be a consideration for the Committee when considering their recommendation. Mr Lewis was advised that the provision of the Velodrome is not a charitable purpose; there is no obligation on the trust to have a Velodrome, it is just a facility on the trust land. Consideration can be given on how it meets the charitable objectives. The services provided at Maindy can be weighed up against those at Cae Delyn but the issues surrounding the new velodrome and the slope does not form part of the terms of reference. It is for the trustees to decide what is in the best interests of the Charity. Mr Lewis was referred to a number of email exchanges with the Director of Governance and Legal Services on this point; it is for the Committee to take the decision and consider any historic value and decide whether it is so important that it overrides all other considerations. It was suggested that this may be a factor - not the overriding factor or the least important factor, just one of the factors to be taken into account when considering what is in the best interest of the Charity.

Mr Lewis expressed concern that should trust protection be removed on this occasion, it would set a precedent for other trust protected parkland. Mr Sparks referred to Councillor Thomas commenting that moving the trust land from Maindy Park to Cae Delyn offers protection that Cae Delyn does not currently have, but said that does not appear to be the case. He was advised every trust of any land would have to go through the process as set out in the Charities Act and through the Charity Commission. It is not a new process; it is a well known process which trustees are going through which will then have to get Charity Commission consent, so it does not set any sort of precedent. On querying whether an Advisory Committee has been set up for this purpose previously, Mr Lewis was advised that where a Council has an inherent conflict of interest where it is also a trust holder, this is a method that is used to deal with that conflict.

He said Councillor Thomas has stated, Wales Online 27 December 2022, that other options would need to be considered if the land swap does not go ahead, he has confirmed therefore that this land swap is not the only solution. Mr Lewis was advised that the Committee cannot provide information on comments the Leader of the Council may have made. However, if the decision is not to recommend the land swap, other options would have to be progressed; it does not mean that currently

there are other options on the table; but one of the options routinely considered would be to leave 'as is'.

Mr Sparks, speaking on behalf of the Vulnerable Users of Maindy Park Group, was invited to make oral representations to the Committee. He said that the 2021 census data records that 20% of residents are disabled under the Equality Act and outlined the PHW information which must be contained in the impact assessments.

Mr Sparks expressed concern that the Committee had not agreed to meet vulnerable users at Maindy Park and other sites, and referred to secret or visits taking place with Officers who had either previously failed to complete any impact assessments or had completed them inadequately. He referred to a lack of appreciation of the challenges that will be caused by the land swap; a lack of understanding of the lived experience; how vital a lighted, safe environment is; the lack of a Bus Service that stops at the main entrance gates to Cae Delyn Park; and that the proposed land to be swapped is furthest away from the access points. Consequently, he felt the needs of the beneficiaries are not being considered.

Mr Sparks outlined concerns about the failure to engage on the new proposals and ensure that, after the information provided in the last meeting, different methods would be used to ensure that different groups would be reached. Photographs had been provided comparing and contrasting the consultation undertaken, at the same time, affecting a small part of Roath Rec and the parking. Mr Sparks provided details of that consultation, in relation to Roath Park the consultation was about the net loss of 2 parking spaces, whereas the Maindy Park proposals relate to the complete loss of parking spaces for 75% of the days during the working week; which also impacts on the revenue for the leisure centre, but yet there was not a single piece of paper put up on Maindy Park, on the perimeter, inside or at the Leisure Centre to inform people; there was nothing in the hubs or libraries, unlike the information about the Budget Consultation.

The Director advised that whilst she was not familiar with the Roath Park issue, she did not imagine that they had Advisory Committee meetings to which members of the public were invited and able to put their views forward, these meetings are part of the consultation and people have been welcome to attend in person or digitally. The purpose of the online survey was to ensure that the slightly changed plan went through a similar process to the previously consultation. The previous plan was an indicative plan which did not include arrangements around the proposed access which would need to be put in place should the proposal go ahead. As to a query by Mr Sparks as to why the information had not been made available in other formats in other places, the Director advised that the Council has to use its resources, staff time included, in a reasonable and proportionate way. Reference had been made to the Budget Consultation, it is important that that information is in lots of places, it touches on every single service provided by this Council to every single resident of Cardiff and those who visit and work in Cardiff, particularly because of the budget gap. Whilst this issue is also important, which is why these meetings have taken place, it would not be realistic to compare the resources we can put into our overall Budget consultation to what would be expected on this.

Mr Sparks said he believes that the trust does have its own reserves and queried whether, for this crucial issue, it would have been in order for the trust to have used

some of its own resources. Finance Officers confirmed that the Trust does have its own resources, but referred to concerns about who would authorise the decision to use trust resources.

Mr Sparks raised the question as to why the most vulnerable are being ignored; not considered; and why appropriate resources were not used to seek the inclusion of the most vulnerable in this new plan and why the financial benefit of millions of pounds to the Council is put above their safety and ability to be creative in their local community.

The Chair noted that those were the opinions of Mr Sparks, and that the Committee had received representations from him and other groups at various meetings, which would be taken into account in reaching the decision.

Mr Ian Vincent, speaking on behalf of Cardiff Civic Society, was invited to make oral representations to the Committee. He referred to the net loss of parkland within the city. He said Cardiff already has less open space per capita than many other UK cities.

He said Cardiff Council has failed to follow the guidelines set out by the Charity Commission, and the Advisory Committee has been set up to provide the authority with the answer it wants to hear.

Cae Delyn Park is already a public recreation area and the proposed land-swap, in his view, offers no gain whatsoever for residents. It is 2.1 miles from Maindy Park making it an inappropriate replacement for most of Maindy Park's current users; the land is boggy fields; and lacks amenities and basic infrastructure which make it unsuitable for many users.

He said the Council has failed to place any value on the Velodrome's historic significance which contrasts dramatically with what is said by the Institute of Historic Building Conservation. Maindy Velodrome appears on Cadw's Register of Historic Sites. Cardiff Council is therefore failing in its duty to protect the city's historic and cultural heritage by destroying this beautiful cycle track.

Mr Vincent submitted that, if approved, the land exchange will set a dangerous precedent by removing trust and covenant protection from a cherished Cardiff Park.

Mr Lewis asked for clarification in relation to the financing of the new Velodrome in the Bay and the use of £2.4 million from the education budget to finance the development. Officers advised that in terms of the new Velodrome, the final business case has not been fully approved and agreed. Whilst the use of £2.4 million from the Education budget had been put forward, this has not yet been fully approved, and it would not be possible to establish the funding position with certainty until the new Velodrome proposals are approved. All the required funding would need to be in place for the new Velodrome proposals to proceed. This does not presume that any decision has been made. However, it was understood that the provisional £2.4 million would be the maximum contribution from education, with additional amounts needing to be funded from other sources.

The Chair then advised that the Committee would go into private session to consider their decision. Should there be a need to adjourn until a further date, that would be communicated to the parties, but if not, the decision would be announced in due course.

Following its deliberations in private, the Committee reconvened in public.

The Committee RESOLVED to provide a preliminary announcement of their decision, with a detailed decision and minutes to be published in due course on the Council's Website:

Decision

This Committee consists of three Independent Members of the Council's Standards and Ethics Committee. It was set up by the Council to give an independent recommendation to the Council's Cabinet (the Charity trustee) as to whether it is in the best interests of the Maindy Park Charity to agree to a proposed land swap. The Committee has met on three occasions and has considered the reports and appendices presented to it. It has carried out a site visit, requested additional information, listened to representations from Community Groups, and has carefully considered those representations as well as the written representations, consultation responses, independent valuation and legal advice, and the Equality Impact Assessment.

Having carefully considered all of the relevant information, the Committee has agreed that it believes that the land swap is in the best interests of the Charity and so RECOMMENDS that Cabinet, as the Charity trustee, agree (subject to charity commission consent) to the exchange and release from the Trust of the Maindy Park land (shown on the plan annexed to the report at Appendix C) in exchange for the land at Cae Delyn Park (shown in Appendix D) to be held on trust for the Charity, Subject to the following conditions:

- (i) the new velodrome is to be built and operational prior to the proposed land swap taking place
- (ii) the terms and conditions recommended in the Qualified Surveyors updated report (Appendix E); including specifically in relation to overage provision 50% of the uplift in value to be paid to the trust were the site to be sold for future development for 75 years from the date of the land swap (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) improvement works 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 the amenity value for the purposes of meeting the Trust's charitable objectives; and a further meeting of the Advisory Committee is to be held (within 90 days) to agree proposed recommended improvements, which may be subject to further public consultation, (for the avoidance of doubt this may take place after the recommendation is reported to cabinet)

- (iv) arrangements 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
- (v) 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) the provision of an information board on site to explain the historic use of the site as a Velodrome

AND to make application to the Charity Commission for consent to the land exchange on this basis.

Summary of Reasons for Decision

The land left at Maindy Park will provide a larger area of green space 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.

The meeting terminated at 2.15 pm