

MAINDY PARK ADVISORY COMMITTEE:

12TH OCTOBER 2022

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES & MONITORING OFFICER**

PROPOSED LAND EXCHANGE AT MAINDY PARK

Reason for the Report

1. For the Maindy Park Advisory Committee to consider a proposed exchange of trust land at Maindy Park and to 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.

Background

2. The Council is the sole corporate trustee of Maindy Park, a charity registered with the Charity Commission under Charity Number 524137 (“the Charity”).
3. The land was gifted by the Marquis of Bute to the Mayor, Aldermen, and Burgesses of the City of Cardiff by an Indenture dated 15th August 1922, subject to covenants to use the land for open space, recreation and Playground, a copy of which is annexed at **Appendix 1**, and is the Charity’s governing document. The Charity was first registered with the Charity Commission on the 4th August 1966.
4. The original extent of the Charity’s land as shown in the 1922 deed of Indenture was reduced by two disposals to the Council as local authority to construct the highway known as Crown Way, and expand the Cathays High School play yard. These transactions were authorised by Orders made by the Secretary of State for Education and Science under Section 29 of the Charities Act 1960 on the 4th February 1971 and 1st March 1972 on behalf of the Charity Commission.
5. The income from these sales is currently held as investments. In 1988, the Charity Commission approved a scheme which permitted the income of the charity to be used for the provision of facilities and recreation or other leisure time occupation for the benefit of the inhabitants of the City of Cardiff with the object of improving the conditions of life for those inhabitants. A copy of the scheme is annexed at **Appendix 2**.

6. The current site features an outdoor velodrome, which was constructed for the Empire Games held in Cardiff in 1958, and also a leisure centre with car park. These facilities have been let to a leisure operator under a public concession contract and subject to a long lease. The remainder of the site is made up of open space playground and other recreation facilities. The current site remaining in the Charity is shown in the plan annexed at **Appendix 3**.
7. The Council, in its separate capacity as Local Education Authority, proposes to expand Cathays High School, situated opposite the Charity land, which would require part of Maindy Park to be released for this project. The land anticipated to be required for this project is shown on the plan annexed at **Appendix 4**. The Cathays High School proposals were approved by Cabinet in October 2021, subject to the resolution of certain property and trust matters relating to Maindy Park, being part of the land required for the expansion of the school.
8. The Council is also undertaking a separate project to relocate the existing Velodrome to the International Sports Village, which the Council is developing as a centre of high quality sports facilities. The Council has consulted on that relocation and the outcomes of the consultation were reported to Cabinet in March 2022, when it was agreed that the new Velodrome should be progressed as part of the combined cycling facilities. The Velodrome relocation proposals will be further considered by the Cabinet, along with the full business case for the proposed combined cycling facilities, for decision in February 2023.
9. The Council is proposing a land exchange at Maindy Park in order to facilitate the expansion of Cathays High School, which presents it with a conflict of interests. Having considered how to best manage any conflicts for Cabinet members arising from them having already made decisions on the proposed Council projects, and having to make a decision as to whether the proposed land swap is in the best interests of the charity as sole trustee of the trust, and having obtained legal advice from Counsel, Cabinet in September 2022 recommended Council to set up an independent Advisory Committee (under section 102(4) of the Local Government Act 1972), to be the 'the Maindy Park Trust Advisory Committee', comprised of 3 independent members of the Standards and Ethics Committee and or the Governance and Audit Committee.
10. At its meeting on 29th September, Council established the Advisory Committee with the following terms of reference:
 - (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).'

Issues

11. The proposed use of part of Maindy Park for the school expansion is not compatible with the objects of the Maindy Park Trust as the objects of the charity, based upon the covenants set out in the 1922 Indenture, are to use the land for recreation, playground and open space. However, if the Council as trustee is agreeable, it could consider a disposal of part of Maindy Park in consideration of other land belonging to the Council, if it considers that such an exchange would be in the best interests of the Charity. The extent of the land required is shown shaded blue on the plan annexed at **Appendix 5**.
12. The Council has identified two parcels of land situated at Blackweir, and Cae Delyn, either of which could potentially be offered to enable the Charity to carry out its objectives. Charity trustees are required to have regard to the advice contained in a Qualified Surveyors report in making decisions concerning charity land. An independent valuation report has been procured for the Charity in accordance with the requirements of the Charities Act 2011 and the Charities (Qualified Surveyor's Report) Regulations 1992, and is annexed at **Appendix 6**.
13. In addition, the Council has also undertaken a public consultation exercise in relation to the proposed land exchange. Whilst a public notice is not a statutory requirement where land is intended to be replaced, a notice was placed voluntarily in the Western Mail on the 20th May 2022 as a means to ensure wider consultation across the city. It should be noted that the Charity documents do not specifically define a particular class of beneficiaries and are presumed to benefit the inhabitants of the City of Cardiff. A summary of the responses can be found at **Appendix 7**. All duly submitted consultation responses are to be considered in the decision making process.
14. Under charity law, the consent of the Charity Commission would be required for the proposed exchange of land, because this would be regarded as a disposal to a 'connected person' within Part 7 of the Charities Act 2011.
15. The status of Maindy Park as a charitable trust requires the Council, separately, as Trustee, to consider the proposed land exchange, and make a separate Trust decision having regard to the objects and best interests of the Charity ('the Trust Decision'). The recommendation of the independent advisory committee is an important part of the process of managing the conflict of interests which the Cabinet has, and is intended to safeguard the interests of the trust beneficiaries to ensure the proposed land swap is in the best interests of the Charity.

Legal Implications

16. It is the role of the Maindy Park Advisory Committee to consider the issues highlighted as an independent body, free of any perceived conflict of interest associated with a decision to dispose of charity land by the Council to itself. The Committee is not a decision making body and will be required to form a view and provide a recommendation to Cabinet as to whether the Council, as trustee

of the Charity, should agree to the disposal of land at Maindy Park in exchange for equivalent land at Blackweir or Cae Delyn and to make an application to the Charity Commission for an order approving the disposal. The final decision will be made by Cabinet, acting as Trustee, taking into account the recommendations of the Advisory Committee, by a reduced number of Cabinet members who are not significantly conflicted by previous decisions made by Cabinet in its capacity as local authority, and so who do not have to declare personal and prejudicial interests and withdraw from the decision making process.

17. In considering whether to proceed in disposing of land, the Trustee must consider whether the Charity has power to dispose of the land. There is no express power of disposal in the Council's governing document, being the Indenture dated 22nd August 1922. The Charity's land is considered to be 'Designated Land', being land held for a specific charitable purpose and the Trustee must have regard to its ability to continue to use the land for the provision of recreation, playground, and open space. As there is intention to replace land to continue the objectives, the Charity may rely on the statutory power to dispose of land pursuant to Section 6 of the Trusts of Land and Appointments of Trustees Act 1996. The Trustee must be satisfied that there is nothing within the governance documents of the charity that prevents a disposal of land.
18. In addition, the Trustee must also comply with the procedural requirements set out in Part 7 of the Charities Act 2011. Generally, no land held in trust by a Charity may be disposed of without permission from the Charity Commission or the Court. However, a trustee may dispose of land where it can comply with the requirements set out Part 7, which requires the Charity to obtain and consider a written report from a Qualified Surveyor, and to advertise the disposal. A copy of the Qualified Surveyor's report prepared by Cooke and Arkwright dated 17th December 2021 has been procured for the charity and attached for consideration (**Appendix 5**).
19. As the proposal involves a proposed exchange of land, the statutory requirement for a charity to advertise a disposal does not apply pursuant to Section 121(5)(a) Charities Act 2011. However, public notice has been published (as explained in paragraph 13 above) to ensure public consultation. A summary of the representations made is annexed for consideration (**Appendix 6**).
20. The Trustee must make a decision that is in the best interests of the Charity, not the Council as a local authority pursuing an education facility. In particular, the Trustee may wish to have regard to (but not be limited to) the following matters:
 - (i) the financial and amenity value of the land offered in exchange, having regard to the charity's objects;
 - (ii) the advice contained in the Qualified Surveyor's report and any terms recommended;

- (iii) consideration of the alternative land swap sites and a recommended preferred option;
 - (iv) assessment of the option of retaining the existing land as opposed to exchanging land;
 - (v) consideration of all representations submitted by those in favour of, and those opposed to, the proposed land swap;
 - (vi) whether the consultation was accessible by the majority of beneficiaries;
 - (vii) consideration of any site visit undertaken; and
 - (viii) the need for the committee to take account of all relevant factors and disregard any irrelevant factors.
21. Should the Trustee be minded to agree to an exchange of land, permission from the Charity Commission is required because the disposal by the Council as Trustee to itself as local authority, would be deemed to be a transfer to a connected person as defined by s.118 of the Charities Act 2011. An application would need to be made for an order from the Charity Commission. In arriving at a decision to authorise the disposal, the Commission must be satisfied that:
- i) The disposal is “expedient in the interests of the Charity”;
 - ii) That it is in the trustee’s view that the disposal is in the best interests of the Charity; and
 - iii) The decision to proceed with the disposal is within the range of reasonable decisions that the trustee could take.

Equalities & Welsh Language

22. In considering this matter the decision maker must have regard to the Council’s duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment(c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h)Sexual orientation (i)Religion or belief –including lack of belief.
23. When taking strategic decisions, the Council also has a statutory duty to have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage (‘the Socio-Economic Duty’ imposed under section 1 of the Equality Act 2010). In considering this, the Council must take into account the statutory guidance issued by the Welsh Ministers ([WG42004 A More Equal Wales The Socio-economic Duty Equality Act 2010 \(gov.wales\)](#)) and must be able to demonstrate how it has discharged its duty.
24. An Equalities Impact Assessment aims to identify the equalities implications of the proposed decision, including inequalities arising from socio-economic

disadvantage, and due regard should be given to the outcomes of the Equalities Impact Assessment and the Health and Safety Assessment , both of which are annexed to this report (**Appendix 7**).

The Well-being of Future Generations (Wales) Act 2015

25. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The wellbeing objectives are set out in Cardiff's Corporate Plan 2022-25: [Cabinet 24 Feb 2022 Corporate Plan 2022-25 App A.pdf \(moderngov.co.uk\)](#)
26. When exercising its functions, the Council is required to take all reasonable steps to meet its wellbeing objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the wellbeing objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
27. The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
28. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible on line using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>
29. Further legal advice will be available from an independent legal advisor at the Committee meeting.

Financial Implications

30. Formal tax advice has been sought which will be shared once received.

Recommendations

The Committee is asked to consider the information contained in this report and its appendices and:

1. To make one of the following recommendations to Cabinet:
 - a) To agree to the disposal and release from the Trust of the land shown shaded blue on the plan annexed at **Appendix 4** in exchange for land at Blackweir in accordance with and upon such terms as recommended in the Qualified Surveyors report and to make application to the Charity Commission for consent to the disposal; or
 - b) To agree to the disposal and release from the Trust the land shown shaded blue on the plan annexed at **Appendix 4** in exchange for land at Cae Delyn Park in accordance with and upon such terms as recommended in the Qualified Surveyors report and to make application to the Charity Commission for consent to the disposal ; or
 - c) To reject the local authority's proposals to exchange either parcel of land identified under recommendations (a) or (b) above;

OR

2. To instruct officers to obtain further specified information or take further specified actions and report back to a future meeting of the Advisory Committee for the Committee to give further consideration to its recommendation/s to Cabinet.

DAVINA FIORE

Director of Governance & Legal Services and Monitoring Officer

6th October 2022

Appendices

1. Indenture dated 15th August 1922
2. Charity Commission Scheme dated 10th March 1988
3. Charity Land Plan
4. Proposed Charity Land to be exchanged
5. December 2021 – Qualified Surveyor's Report
6. Summary of consultation responses
7. Equalities Impact Assessment and Health and Safety Assessment

Background papers

Cabinet report, '21st Century Schools: The Expansion and Redevelopment of Cathays High School', 14th October 2021; and decision in respect thereof.

Cabinet report, 'Cardiff Bay Regeneration Overview', 10th March 2022; and decision in respect thereof.

Cabinet report, Maindy Park Trust – Decision Making Arrangements, 28th September 2022; and decision thereof

Council report, Maindy Park Trust – Establishment of Independent Advisory Committee, 29th September 2022