

**CARDIFF COUNCIL
CYNGOR CAERDYDD**



MAINDY PARK ADVISORY COMMITTEE: 17TH NOVEMBER 2022

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

**PROPOSED LAND EXCHANGE AT MAINDY PARK – FURTHER
INFORMATION**

APPENDIX H TO THIS REPORT IS EXEMPT FROM PUBLICATION AS IT CONTAINS EXEMPT INFORMATION OF THE DESCRIPTION CONTAINED IN PARAGRAPHS 14 & 21 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972.

Reason for this Report

1. For the Maindy Park Advisory Committee to consider further information in relation to a proposed exchange of trust land at Maindy Park and to consider the recommendation/s to be made 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”), with the objects to use the land for recreation, playground and open space.
3. The Council, in its separate capacity as Local Education Authority, is proposing a land exchange at Maindy Park in order to facilitate the expansion of Cathays High School, which presents the Council with a conflict of interests.
4. In accordance with legal advice from Counsel, on 29th September the Council resolved to manage its conflict of interests by establishing an independent advisory committee comprised of 3 independent members of its Standards and Ethics Committee, ‘the Maindy Park Trust 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).'

5. The Maindy Park Trust Advisory Committee held its first meeting on 12th October 2022 to consider this matter. The Committee meeting was attended by:
 - (i) The Council's Director of Governance and Legal Services and Monitoring Officer, who presented the report to Committee ('the October Committee report') and provided advice on governance issues relating to committees of the Council and the Council's decision making processes;
 - (ii) A charity law specialist from Geldards Solicitors, who was engaged to provide independent legal advice on charity law matters to the Advisory Committee;
 - (iii) An independent, qualified surveyor from Cook & Arkwright, to answer questions in respect of the independent valuation report provided in relation to the proposed land exchange (Appendix 5 to the October Committee report);
 - (iv) Council officers from the Strategic Estates department and Property Legal Services to answer any questions;
 - (v) Representatives from 'Save Maindy Velodrome' campaign group, the 'Association of the Beneficiaries of the Covenanted Land at Maindy Park and of the Maindy Park Trust' and 'Cardiff Civic Society' (together referred to in this report as 'the objectors'), who were given the opportunity to make written and oral representations to the Committee;
 - (vi) Various other members of the public, including a representative of the newly formed Vulnerable Users of Maindy Park Group; and
 - (vii) Council note-takers.

6. The Advisory Committee met in public to receive the report, hear representations and ask questions on the evidence presented to it. The objectors were also given the opportunity to ask questions through the Chair. The Committee then retired to deliberate, in private, with its legal advisors.

Issues

7. The report submitted to the Advisory Committee on 12th October 2022 ('the October Committee report') sets out full details about the Charity, the background to this matter and relevant issues. The October Committee report is appended as **Appendix A** to this report.
8. Following careful consideration of all the evidence, written and oral, presented to the Advisory Committee meeting on 12th October 2022, the Committee decided to defer its decision on the recommendation to be made to the Cabinet, in order to obtain and consider further information in relation to the following:
 - (i) Advisory Committee members wished to make a private site visit of the land at Maindy Park, and the land to be considered for a land swap at Blackweir and Cae Delyn Park, accompanied by the Operational Manager for Parks and the Head of Health and Safety, for the Committee members to inspect the land topography, its current and potential use in relation to the Charity's objectives and any health and safety concerns. Members considered the objectors' offer to attend the site visit, but decided that the presence of members of the public would not be helpful. A site visit was duly carried out on Wednesday 26th October;
 - (ii) Confirmation to be provided by Council officers of the area of Trust land which is required for the proposed exchange. This is shown on the plan attached as **Appendix B**;
 - (iii) Individual responses to the public consultation to be inspected by one or two members of the Committee (with personal details redacted) to satisfy the Committee that all responses had been accurately reflected in the summary of responses (Appendix 7 to the October Committee report);
 - (iv) For the Equalities Impact Assessment to be reviewed and updated to ensure that it addresses all issues relevant to the proposed land swap decision (rather than the separate decision which is to be made about relocation of the Velodrome – please see paragraph 13 below) and that it includes all equalities issues raised by respondents to the public consultation. An updated Equalities Impact Assessment is attached as **Appendix C**;
 - (v) Further advice to be sought from the independent valuer in relation to the Committee considering whether to recommend the application of an overage provision as a term of the land exchange. This would entitle the Charity to receive a share of any potential increase in value if an implementable planning permission was obtained for a higher value use permitted by the release of the restrictive covenant. The further advice received from Cooke and Arkwright is attached as **Appendix D1** (and constitutes an addendum to the Qualified Surveyor's Report, appended to the October Committee report and **Appendix D** to this report); and
 - (vi) Any further representations, from both objectors and supporters of the proposed land exchange, who were to be given a further opportunity to

make any additional relevant points or provide any additional relevant information (which had not previously been submitted to the Committee). Further representations received are attached as **Appendix E**.

9. Following the site visit carried out on 26th October, the Committee agreed to request the following further information:
 - (i) A map to show all Council owned green spaces in Gabalfa, Heath and Cathays wards of Cardiff, which are currently used for recreational purposes, in order to consider the proposed land swap within the context of other land available for public recreation. These maps are attached as **Appendix F**; and
 - (ii) Data on incidents of crime, anti-social behaviour and public safety in relation to each site, provided by the South Wales Police, in order to consider safety concerns in relation to the proposed exchange land. This data is shown in **Appendix G**.
10. At the October Advisory Committee meeting, it was noted that a representative of 'the Vulnerable Users of Maindy Park Group' wished to address the next meeting; and the Committee agreed to allow this. The Vulnerable Users of Maindy Park Group (represented by Clare Richardson) has been allocated ten minutes to make oral representations to the Committee at this meeting.
11. In considering the representations made to the Advisory Committee on this matter, the Committee must take account of all relevant information and disregard all irrelevant information. Specifically, the Committee should note that the proposed relocation of Maindy Velodrome is not strictly relevant to its decision, because, whilst track cycling is a recreational activity within the scope of the Charity's objectives, the provision of a velodrome is not a specific objective of the Charity.
12. The question the Committee must consider is whether the proposed land swap is in the best interests of the Charity and its beneficiaries, having regard to the suitability of the proposed replacement land, compared with the land at Maindy Park, for meeting the objectives of the Charity, and any difference in the financial or amenity value of the land.
13. The Committee should also note that the proposed relocation of the Velodrome is subject to a separate decision, which is to be taken next year; and that a separate Equalities Impact Assessment is being carried out to inform that decision. The question of whether or not the Velodrome should be relocated is outside the terms of reference of this Advisory Committee. (However, further information is being provided to objectors in response to concerns raised at the last Committee meeting about the angle of banking of the proposed new velodrome and the timing for completion of the road circuit.)
14. Similarly, the Committee should note that the merits and process in relation to the Cathays High School development proposals are irrelevant and outside the terms of reference for the Committee.

Legal Implications

15. Relevant legal implications are set out in the October Committee report, **Appendix A**.
16. Further legal advice will be available from the independent legal advisor at the Committee meeting.

Financial Implications

17. The Legal Implications in **Appendix A** set out the considerations that are needed in determining the decision. The key consideration from a financial perspective is that any decision undertaken is consistent with the Charitable purposes of the Trust.
18. Expert advice on the tax implications of the proposed land swap for the Charity, provided by independent tax specialists, is attached as **Appendix H (Exempt from publication)**.

Recommendations

The Committee is asked to consider the information contained in this report and its appendices and to make one of the following recommendations to Cabinet:

- a) To agree to the disposal and release from the Trust of the land shown on the plan annexed at **Appendix B** in exchange for land at Blackweir (shown in **Appendix B1**) in accordance with and upon such terms as recommended in the Qualified Surveyors report (**Appendix D**); to decide the overage provision, if any, to be included as a term of the land exchange, having regard to the further advice of the Qualified Surveyor (**Appendix D1**); 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 of the land shown on the plan annexed at **Appendix B** in exchange for land at Cae Delyn Park (shown in **Appendix B2**) in accordance with and upon such terms as recommended in the Qualified Surveyors report (**Appendix D**); to decide the overage provision, if any, to be included as a term of the land exchange, having regard to the further advice of the Qualified Surveyor (**Appendix D1**); 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.

DAVINA FIORE
Director of Governance & Legal Services and Monitoring Officer
11 November 2022

Appendices

- Appendix A** - Maindy Park Trust Advisory Committee report, 'Proposed Land Exchange at Maindy Park', 12th October 2022
- Appendix B** - Plan showing Charity land required for Proposed Exchange
- Appendix B1** - Plan showing proposed exchange land at Blackweir
- Appendix B2** - Plan showing proposed exchange land at Cae Delyn Park

- Appendix C** - Equalities Impact Assessment (Updated)

- Appendix D** - Qualified Surveyor's Report
- Appendix D1** - Qualified Surveyor's further advice in relation to Overage

- Appendix E** - Further written representations (redacted to remove personal information)

- Appendix F** - Maps showing public recreation spaces in Gabalfa, Heath and Cathays

- Appendix G** - Data on incidents of crime, anti-social behaviour and public safety for all 3 sites

- Appendix H** - **Specialist tax advice (Exempt from publication)**

Background papers

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

Responses to May 2022 public consultation on the proposed land exchange