

MAINDY PARK ADVISORY COMMITTEE:

23RD JANUARY 2023

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

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

Appendix J to this report is exempt from publication as it contains exempt information of the description contained in paragraphs 14 & 21 of Schedule 12Ai to the Local Government Act 1972

Reason for this Report

1. For the Maindy Park Trust Advisory Committee to consider additional 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 October Committee meeting'). The Committee considered the report of the Director of Governance and Legal Services (**Appendix A**) and received written and oral representations made on behalf of various interested groups, along with advice from an independent valuer and an independent charity lawyer, and information provided by Council officers. Following careful consideration of all the evidence (written and oral) presented to it, 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 certain specific issues.
6. The Committee met again on 17th November 2022 to consider the further information it had requested, which was presented in the 'November Committee report', **Appendix B** to this report.
7. The November Committee meeting was attended by:
 - (i) The Council's Director of Governance and Legal Services and Monitoring Officer, who presented the report to Committee and provided advice on governance issues relating to committees of the Council and the Council's decision making processes;
 - (ii) A charity lawyer from Geldards Solicitors, who had been engaged to provide independent legal advice on charity law matters to the Advisory Committee;
 - (iii) An independent, qualified surveyor from Cook & Arkwright, who had provided an independent valuation report (and addendum) in relation to the proposed land exchange (Appendices D and D1 to the November Committee report);
 - (iv) Council officers from the Strategic Estates department and Property Legal Services to answer any questions;
 - (v) Representatives from the 'Vulnerable Users of Maindy Park Group', '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'); and
 - (vi) Council note-takers.
8. At the outset of the November Committee meeting, the Chair announced that the Committee wished to seek further clarification in relation to certain issues

before making its recommendations to Cabinet. The Director of Governance and Legal Services explained that, having carefully considered all the information presented to the Committee, including emails submitted by members of the public, the Committee wished to request clarification in relation to the following issues:

- (a) A definitive site plan was requested to confirm the land which was proposed to remain within the Trust and the land proposed to be exchanged for the school development, including details of any proposed dual use of land (for parking, access etc) by the Trust and the school, clearly identifying the area of such land and the hours for the proposed dual use;
 - (b) Updated valuation advice to reflect the definitive site plan of the proposed land exchange, including dual use land and the hours of dual use (as referred to in sub-paragraph (a) above);
 - (c) In relation to the proposed alternative land, it was explained that the Committee did not consider Blackweir to be suitable, and required further information on Cae Delyn, specifically in respect of any potential conflict between the Trust's objectives and the current use and condition of Cae Delyn, and in respect of potential works to be carried out to ensure that Cae Delyn is more suitable to meet the objectives of the Trust; and
 - (d) Additional information in relation to the Equalities Impact Assessment (EIA), specifically in relation to any equalities implications of the design of the new velodrome, for the Committee to be sure that all relevant equalities implications had been taken into account.
9. The Committee then heard further submissions submitted on behalf of the Vulnerable Users of Maindy Park Group; and also responded to queries from representatives of other groups in relation to the notice which would be given of the next Committee meeting date and the further information to be provided at the request of the Committee; and the times of the site visits undertaken by the Committee. It was agreed that objectors would be given as much notice as possible of the date of the next meeting, although the statutory rules for Council Committee meetings require the agenda and reports for a meeting to be published at least 3 clear days prior to the date of the meeting.

Issues

10. In response to the clarification requested by the Committee at its November meeting, the following further information has been obtained:
- (i) A revised site plan showing the land at Maindy Park which is proposed to remain within the Trust and the land proposed to be exchanged for the school development has been prepared by Council officers, in consultation with the independent legal advisor and surveyor for the Trust, and is attached as **Appendix C**. The revised plan incorporates the frontage land onto Crown Way (shown coloured beige on the Plan) for access purposes, so that any future highway design work around the detail of the access to the Trust's retained land and proposed school,

can be fully considered and designed in such a way as to not be detrimental to either party. Any agreement put in place between the Trust and the Council in relation to the proposed land exchange would retain specific rights of way for the Trust to access/egress over the land coloured beige on the Plan, as well as the right to park on this land after 5pm on weekdays and at the weekend.

- (ii) The difference between the original plan and the revised plan for the proposed land exchange at Maindy Park is shown in the plan attached as **Appendix C1**, with the dotted line showing the original proposed land swap and the red line showing the revised area for the proposed exchange. The Committee will note that under the revised proposal, the Trust is to retain use of the additional land coloured beige (for access to its retained land and car parking, as explained in sub-paragraph (i) above). The remainder of the additional land being a thin strip of existing amenity land, shaded yellow on the plan (approximately 14% of the original land swap area) running along the south and east boundaries of the land.
- (iii) The plan of the proposed alternative land at Cae Delyn has also been updated to confirm the boundaries and show rights of access to that part of the land that is intended to be transferred to the Trust. The updated plan of the proposed exchange land at Cae Delyn is attached as **Appendix D**.
- (iv) Further consideration of the proposed alternative land at Cae Delyn has confirmed that Cae Delyn is not currently held in trust and that its current ownership and use is not incompatible with the Trust's charitable objectives. The land consists of green space, grassed playing fields and surfaced footpath (as shown in the aerial plan at **Appendix D1**), all suitable for public recreation. The pitches are available for booking by any member of the public. The Council's records indicate that the costs of maintaining the pitches are higher than the rental income generated and the Council therefore proposes that future management of the day to day activities could be managed through a potential lease granted by the Trust to the Council, for the Council to continue with maintenance of the park and collection of any pitch fees to be reinvested in the park.
- (v) Following discussion with the Council's Parks Operational Manager, it has been agreed that Cae Delyn could benefit from improvements to the sports pitches through drainage works, supply and installation of new posts and ground sockets, consideration for the provision of solar lighting, footpath improvements and the provision of site furniture (such as park benches). However, it should be noted that the health and safety assessment of the site (appended to the Equalities Impact Assessment, **Appendix F**) does not identify any of these works as essential in order to meet health and safety duties. The Committee is invited to consider whether any improvement works may be required in order to enhance the amenity value of the land at Cae Delyn Park for recreation and public open space purposes. The Committee may make any recommendation it considers appropriate in this regard in pursuance of the best interests

of the Trust. However, it should be noted that any improvement works may be subject to public consultation and will require approval by the Council.

- (vi) The independent valuer from Cook and Arkwright has provided revised valuation advice to reflect the updated site plans for the proposed land exchange (**Appendix C and Appendix D**). The revised valuation advice, which takes account also of the proposed dual use of part of the land for access and car parking (referred to in sub-paragraph (i) above), is appended as **Appendix E**. The Committee will note that the revised valuation report also recommends that an overage clause be placed on the land for uses other than education (paragraph 14 of the Valuer's report, Appendix E). This 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, permitted by the release of the restrictive covenant. The Committee will note that the Valuer's recommendation is that overage should be set at 50% of the uplift in value and should apply for a term of at least 75 years.
- (vii) Additional information in relation to any equalities implications of the design of the new velodrome has been sought, specifically in relation to accessibility of the proposed new velodrome facilities, in order for the Committee to be satisfied that all relevant equalities implications have been taken into account. This additional information, obtained from the new velodrome design team and the cycling community, has been incorporated within the updated Equalities Impact Assessment (EIA), appended as **Appendix F**. The Committee will note that the updated EIA also takes account of an updated health and safety assessment of the proposed alternative land at Cae Delyn Park (and removes references to the land at Blackweir, which the Committee has ruled out of consideration), as well as the responses to the second public consultation (please see paragraph 11 below).

11. Public notice of the revised plans was published in the Western Mail on 16th December 2022 and a public consultation on the updated proposals was carried out to seek any additional comments on the proposals as shown in the revised plans (further to the previous public consultation on the original proposals, which was carried out in May 2022). The consultation was published on the Council's website from 16th December 2022, with a consultation deadline of 9th January 2023. 785 consultation responses were received during the consultation period. The outcomes of the consultation are set out in the Consultation Report appended as **Appendix G**.

12. Since the date of the November Committee meeting, the Director of Governance and Legal Services has also received and responded to various emails received from objectors and other members of the public in relation to this matter. The Committee has been provided with copies of the correspondence so that they have the opportunity to consider any new issues raised by objectors and give their views. This correspondence is appended as **Appendix H**.

13. In response to comments made by objectors in correspondence with the Director of Governance and Legal Services (referenced in paragraph 12 above), further information has been sought from the Council's Finance officers in relation to any financial implications for the Trust arising from income generated by the current velodrome or car parking. Finance officers have advised that there is no income due to the Trust from the velodrome or car park, because the velodrome and car park are part of the facilities together with the Maindy Leisure Centre, operated by a third party under a concession arrangement, which as a whole, is operating at a deficit. Finance officers have, in confidence, received from the third party operator the accounts for these facilities for each year since the concession agreement started (2016), which are appended as **Appendix J (Exempt)**. For completeness, it should also be noted that no costs have been charged to the Trust for any upkeep of the Trust land, such as maintenance of footways, roads or parkland.
14. The Committee has agreed to allow a representative of any groups who have made representations on this matter to address the Committee at this meeting for up to 5 minutes to provide a final opportunity to submit any new points which have not previously been raised. Any representative wishing to speak at the meeting is to provide advance notice of their intention to speak and the new points they intend to raise, to be received by midday on 19th January 2023, in order to allow the Committee sufficient time to consider those points and seek any clarification they may consider necessary.
15. In considering all representations made to the Advisory Committee on this matter, the Committee must take account of all relevant information and disregard all irrelevant information. Specifically, and as noted in the November Committee report, the Committee is advised 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. The Committee has noted that the proposed relocation of the Velodrome is subject to a separate decision (to be informed by a separate Equalities Impact Assessment), and the question of whether or not the Velodrome should be relocated is outside the terms of reference of this Advisory Committee. However, as noted in paragraph 10(vii) above, the EIA for the proposed land swap has been revised to include consideration of any equalities implications arising from the design of the new velodrome, to ensure that the Committee's decision is informed by all relevant equalities implications.
16. Similarly, the Committee is advised 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.
17. The key question the Committee must consider is whether, having regard to all the relevant information and independent professional advice, it considers the proposed land swap to be in the best interests of the Charity and its beneficiaries. In this regard, the Committee should consider 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. The Committee may recommend the Trust to agree

to the proposed land swap only if it is satisfied that it is in the best interests of the Trust to do so.

Legal Implications

18. Relevant legal implications are set out in the October Committee report (**Appendix A** to this report) and in the body of this report.
19. Further legal advice will be available from the independent legal advisor at the Committee meeting.

Financial Implications

20. The Committee is referred to the financial implications advice set out in the October and November Committee reports (**Appendix A** and **Appendix B**).
21. The Maindy Park Trust's Annual Accounts for the year ended 31st March 2022 are appended as **Appendix K**.
22. The Committee will note that, as set out in paragraph 13 above, there is no income due to the Trust arising from the current facilities operated by the leisure provider on the Maindy Park Trust site, due to the fact that expenditure exceeds income.
23. In determining the level of financial performance of the sites situated upon the Maindy Park Trust land, consideration has been given to both direct and indirect costs arising from the management of the contract as a whole compared to income. Some of the consideration has been from dialogue and the sharing of confidential commercial information from the operator.

Recommendations

The Committee is asked to consider all the relevant information presented to it in relation to this matter, and to make one of the following recommendations to Cabinet:

- a) To agree to the disposal and release from the Trust of the Maindy Park land shown on the plan annexed at **Appendix C** in exchange for the land at Cae Delyn Park (shown in **Appendix D**), in accordance with and upon such terms and conditions as are considered appropriate, including those:
 - (i) recommended in the Qualified Surveyors updated report (**Appendix E**); including specifically in relation to overage provision, if any, to be included as a term of the land exchange;
 - (ii) relating to proposed improvement works to be carried out at Cae Delyn (shown in **Appendix D**) in order to improve its amenity value for purposes of meeting the Trust's charitable objectives; and
 - (iii) in respect of arrangements to be made between the Trust and the Council for maintenance and management of the land at Cae Delyn (shown in **Appendix D**),

AND to make application to the Charity Commission for consent to the disposal on this basis; OR

- b) To reject the local authority's proposals to exchange the Trust land at Maindy Park shown on the plan annexed at **Appendix C** for the land at Cae Delyn Park shown in **Appendix D**.

DAVINA FIORE

Director of Governance & Legal Services and Monitoring Officer

17 January 2023

Appendices

- Appendix A** - 'Proposed Land Exchange at Maindy Park', Maindy Park Trust Advisory Committee report, 12th October 2022
- Appendix B** - 'Proposed Land Exchange at Maindy Park – Further Information', Maindy Park Trust Advisory Committee report, 17th November 2022
- Appendix C** - Revised Site Plan, Maindy Park Trust land
Appendix C1 Site Plan, Maindy Park Trust land, showing original and revised proposals
- Appendix D** - Revised Site Plan, proposed exchange land at Cae Delyn Park
- Appendix D1**- Proposed exchange land at Cae Delyn Park – Aerial shot
- Appendix E** - Qualified Surveyor's Updated Report
- Appendix F** - Equalities Impact Assessment (Updated)
- Appendix G** - Consultation Report (Updated Proposals)
- Appendix H** - Email correspondence with objectors and other members of the public (redacted to remove personal information)
- Appendix J** - Maindy Leisure Centre, Accounts 2016-2022 – **EXEMPT**
- Appendix K** - Maindy Park Trust, Annual Accounts for year ended 31/03/2022

Background papers

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

Responses to the December 2022 public consultation on the updated plans for the proposals