

## **Cabinet – 21 October 2009**

### **Cannock Chase and Pelsall District Miners Charity (Oak Park)**

**Portfolio:** Councillor Towe, Finance and personnel

**Service:** Legal Services

**Wards:** Aldridge North and Walsall Wood Ward

**Key decision:** No

**Forward plan:** No

#### **1. Summary of report**

Walsall Council was appointed Trustee of the Cannock Chase and Pelsall District Miners Charity in 1932. The Trust comprises of a piece of land otherwise known as Oak Park, which comprises of an open recreation ground together with the Oak Park Leisure Centre and Walsall Wood Football Club.

The terms of the Trust were that the Council were responsible for maintaining an open recreational space for the benefit for the inhabitants of the area and in particular, a restriction was placed upon the land preventing any buildings being put on the land. The purpose of this report is to advise Cabinet in relation to the terms of the trust and on ongoing dialogue with the Charities Commission.

#### **2. Recommendations**

- 2.1 Note the Charity commission order and direction that a land swap of the Council land indicated on **plan A** with Charity land marked on **plan B** be undertaken by no later than the 21 May 2010.
- 2.2 Authorise the Assistant Director (Legal & Constitutional Services) on behalf of Council to execute the land swap as detailed above in paragraph 2.1.
- 2.3 Note that a identical report to this one advising the trustees (full Council) of the present situation is to be undertaken and seeking their authorisation of the land exchange on behalf the Trust.

#### **3. Background information**

The Council holds the charity land ("Oak Park") as Trustee. This places the Council in the unique position of being a Trustee of land in its own right albeit only being able to deal with the land in accordance with the terms of the Trust. The duties and responsibilities of the Trustee include acting at all times in the best interests of the Trust. This at times can cause difficulties for local authorities where as a Local Authority its interests may be contrary to the interests of the

Trust for which it is Trustee. Historically, the Council has undertaken a number of actions that were generally for the benefit of the community but represented technical non-compliance with the terms of the original Trust. In particular, the Trust contains a restriction that the Council cannot build on the land, sell it or in any way do something which prevents it from being an open recreation.

### 3.2 Walsall Wood Football Club

Historically, there has been a football club on Oak Park for many generations. It is unknown as to precisely when the football club took up the site. However, they have previously entered into a lease with the Council for occupancy of the site at a peppercorn rent. The presence of the football club on the site is not in accordance with the terms of the Trust Deed, as detailed above. This means that the Charities Commission have the power to require the Council to move the football club from the site by way of an order from the Charities Commission.

### 3.3 Oak Park Leisure Centre

The Oak Park Leisure Centre has been on the site since its construction in the 1970s and or 1980s. Again, its presence on the site is not in accordance with the terms of the original Trust Deed and as a consequence, the Charities Commission have the right to insist upon the removal of the leisure centre from the site by way of an order.

### 3.4 Disposal of land to the Walsall Wood Methodist Church

In the late 1960s, the Council agreed to dispose of a small piece of land adjacent to the Walsall Wood Methodist Church on the Lichfield Road. This land disposal eventually took place in October 1975. Again, the said disposal was in breach of the terms of the originating Trust.

### 3.5 Charities Commission

The Charities Commission is a regulatory body responsible for overseeing the conduct of charitable affairs. In this case, the Charities Commission has been for sometime in the process of conducting a review nationally of local authorities' actions as Trustees generally and found a number of councils to have lapsed over time in their compliance with the trust deeds that made them Trustees.

The Commission, having considered the historical actions of the Walsall Council in particular permitting the Football club and leisure centre to be on the site and disposal of the small piece of land to the church considered the council to be in breach of the terms of the original Trust.

Considerable efforts have been made by Council Officers to resolve the difficulties and satisfy the Commissions with regard to the Councils management of the trust. The Commission after having entered into discussions as to what potential enforcement action it may wish to undertake against the Council for breaches of the originating Trust is now satisfied with regard to the proposed resolution of the difficulties. It has used its statutory powers to make an order and direct the exchange of the Council land and charity land. In effect a swap of land in the same locality of equal value and size. The Commission came to the

conclusion to use its powers in this way, after extensive efforts by Council officers, as it represented the most effective means of dealing with the situation. In the alternative the Commission could have used its statutory powers and ordered that both the football club and Leisure centre be demolished. However, the Commission recognised and accepted Council officers representations that these community facilities offered genuine contribution to the area. It therefore ordered that the land immediately adjacent to the Oak Park, being land already used by the council as apart of the park, albeit land that was not part of the Trust, be transferred to the Trust in return for the land that the football club and leisure centre are built upon being transferred to the council.

### 3.6 Charity Commission Order – its impact

The effect of the order is neither party suffers a detriment, the land in question is very similar in size and in the same location. Further as part of the process of the land transfer being considered, the Commission required the land to be independently valued. This valuation placed both parcels of land due to their similar size and locality as being the same in total value. The Council land being valued at £76,000 and Trust land being valued at £76,000. The Commission does not consider the Charity to in any way be disadvantaged by the land exchange otherwise it would not have ordered it, and from the Councils perspective the Council acquires land of a similar value in addition it is able to keep a leisure centre and community football club in the area.

## 4. Resource considerations

### 4.1 Financial:

4.2 **Legal:** The Charities Commission have a number of powers that it could use against the council, however it has decided to use its powers in the least negative impact manner but in the most effective manner it could have and order the land exchange.

4.3 **Staffing:** None

5. **Citizen impact:** Valuable community facilities remain open for use by the public.

### 6. Community safety

None

### 7. Environmental impact

None

**8. Performance and risk management issues**

8.1 **Risk:** None

8.2 **Performance management:** None

**9. Equality implications**

None

**10. Consultation**

As part of the Charity Commission process for considering exercising its powers, it is duty bound to undertake consultation of interested parties. The Commission have done this.

**Background papers**

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Rory Borealis  
Executive Director (Resources)

12 October 2009



Councillor Chris Towe  
Portfolio holder

12 October 2009

AREA EDGED RED = 35,110 SQ M

# Plan B



Charity owned land  
- marked by chevrons

ESTATES AND ASSETS  
MANAGEMENT

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0921 751111  
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E: 0921 751111

WITH ADDRESS:  
LICHFIELD ROAD  
WALSALL WOOD

DRAWING NO: (EPMS 0176/1)  
DATE: 22.08.2008  
DRAWN BY: JSP



SCALE  
1:2500

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