

# Public Document Pack

Penallta House,  
Tredomen Park,  
Ystrad Mynach,  
Hengoed CF82 7PG

Ty Penallta,  
Parc Tredomen,  
Ystrad Mynach,  
Hengoed CF82 7PG



[www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)  
[www.caerffili.gov.uk](http://www.caerffili.gov.uk)

For all enquiries relating to this agenda please contact Charlotte Evans  
(Tel: 01443 864210 Email: )

**Date: 28th September 2016**

Dear Sir/Madam,

A meeting of the **Cabinet as Trustees of Dafydd Williams Park Caerphilly**. will be held in the **Sirhowy Room, Penallta House, Tredomen, Ystrad Mynach** on **Wednesday, 5th October, 2016** at **2.30 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in blue ink that reads 'Chris Burns'.

**Chris Burns**  
INTERIM CHIEF EXECUTIVE

## AGENDA

	Pages
1 To receive apologies for absence.	
2 Declarations of Interest.	
Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on the agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.	
To receive and consider the following report: -	
3 Neuadd Y Parc Hall - Dafydd Williams Park Caerphilly.	

1 - 18

A greener place Man gwyrddach



**Circulation:**

Councillors Mrs C. Forehead, N. George, D.T. Hardacre, D. Havard, K. James, Mrs B. A. Jones, D.V. Poole, K.V. Reynolds, T.J. Williams and R. Woodyatt,

And Appropriate Officers.



## **CABINET AS TRUSTEE OF DAFYDD WILLIAMS PARK CAERPHILLY - 5TH OCTOBER 2016**

**SUBJECT: NEUADD Y PARC HALL - DAFYDD WILLIAMS PARK CAERPHILLY**

**REPORT BY: HEAD OF POLICY AND PERFORMANCE AND INTERIM HEAD OF  
LEGAL AND MONITORING OFFICER**

---

### **1. PURPOSE OF REPORT**

- 1.1 To provide cabinet, acting for the Council as Corporate trustee (the Trustee) with an overview and update on the use of Neuadd y Parc Hall, which forms part of Dafydd Williams Park in Caerphilly.
- 1.2 To provide the Trustee with an outline of the statutory requirements to be followed when considering the use of land held in trust.
- 1.3 To seek the Trustee's views on the options set out in this report and to consider the recommendations set out in paragraph 9 below.

### **2. SUMMARY**

- 2.1 To provide the Trustee with an overview of the history and current position regarding the use of Neuadd y Parc hall in Caerphilly and to seek trustee's views on the recommendations set out in paragraph 9.

### **3. LINKS TO STRATEGY**

- 3.1 To act as Trustee of Dafydd Williams Park (which includes Neuadd y Parc Hall) and, in that capacity, to consider all matters in connection with the use and development of the Park and to preserve the objectives of the trust.

### **4. THE REPORT**

- 4.1 Dafydd Williams Park in Caerphilly (the Park) is held by the Council on charitable trust to be used as a "Recreation Ground for the inhabitants of Caerphilly Urban District and for no other purpose whatever". As the use of the land is for a specific purpose, this is known as 'specie' or 'designated land' and is subject to additional legal requirements under charitable law if any of the trust land is to be disposed of. A disposal includes a sale or a lease of any part of the Park.
- 4.2 The extent of the Park is shown edged black on the plan annexed at Appendix 1. Within the boundary of the Park is the Neuadd y Parc Hall ("the Hall") shown hatched black.

- 4.3 By way of background information, the Caerphilly Aged Pensioners Welfare Committee (referred to in this report as CAPWC) was responsible for building the Hall in the early to mid-1950s. The Council's predecessors granted an initial lease on 25th January 1959 for 21 years from 1954, which expired in 1975. A new lease of the Hall was granted for one year and then on a year-to-year basis on 14th July 1993 at a peppercorn rent to Kenneth Raymond Snell, Glenys Maureen Snell and Sybil Kathleen Cox, although the last remaining tenant relinquished his position in writing on 9th January 2007 and therefore gave up the tenancy. The letter of resignation of the last remaining tenant referred to him being a trustee of Caerphilly Neuadd y Parc Old Aged Pensioners Welfare Hall.
- 4.4 No further action was taken until the end of 2007 when a general meeting was held with a number of parties which re-established the CAPWC. A chair, secretary and holding trustee were appointed. In 2008, following correspondence with the CAPWC, in order to regularise the position in that they were (and currently remain) in occupation of the Hall without any formal documentation in place, it was proposed to permit the CAPWC to take over the running of the Hall on a formal basis. The CAPWC wrote to the Council to request a lease of the Hall and since it had by this time been recognised that the Park was held on charitable trust, the views of the Charity Commission were sought.
- 4.5 The Charity Commission provided its views on the proposals and the requirements that would need to be satisfied in order to proceed with a disposal, which included obtaining a surveyor's report on the proposals. The surveyor would act exclusively for the Council as Trustees. At this time the requirements of the Charities Act 1993 were in force. The provisions have since been replaced by the Charities Act 2011, which contains out similar provisions, brief details of which have been set out below.
- 4.6 As required, a surveyor's report was commissioned and on 29th September 2009 Cabinet received the report attached at Appendix 2. The recommendations set out in the Report were approved by Cabinet but, it was not possible to proceed to implement the decision by formally completing the lease of the land without the necessary consent from the Charity Commission. When consent was sought in 2010, the Charity Commission raised some concerns that the report did not sufficiently address why a disposal by way of lease was in the best interest of the charity. There was further concern that the Council's role as Trustee had become blurred with its role as a local authority in the decision making process resulting in a potential conflict of interests.
- 4.7 As a result of the concerns raised by the Charity Commission the recommendations in the 2009 report were not implemented and unfortunately no further progress was made. The CAPWC remained in occupation of the Hall. It has now been recognised that a number of issues need to be considered by the Trustees in relation to the continued use of Neuadd y Parc Hall.
- 4.8 Members are also asked to note that whilst Cabinet in 2009 had endorsed the grant of £4,500 from the maintenance budget used by the Council for the Park to fund the rental, in light of the concerns expressed by the Charity Commission, officers are of the view that this particular issue should have been the subject of a separate but linked report to Cabinet.
- 4.9 As Trustee of the Park, the primary duty of members is to act solely in the best interest of the trust and to ensure that in exercising its function it acts reasonably, within its powers under established rules and procedures, and in good faith. It must be adequately informed to make decisions affecting the Trust, take further advice where necessary, and consider the relevant factors, which should be taken into account and not to take account of any factors, of which it is not proper to take account.
- 4.10 As part of the wider consideration for members in the management of this trust, this would include not just the Hall, but the whole of the Dafydd Williams Park. Members should consider the following options:

- 4.10.1 For the Council to retire as Trustee and appoint a new trustee in its place or
- 4.10.2 Alternatively, the Park could be transferred to another Charity with similar or the same objects the justification being that there are no funds available to maintain the Park. The Trustee is advised that to date maintenance of the Park has been undertaken by the Council as the Trustee has no funds available to it. The maintenance of the Park has been met to date out of the Park Services budget at an annual cost currently of £9,000 of which £6,500 is spent on grass maintenance. In this regard, it should be noted that the Hall rental, referred to at paragraph 4.13.4, could provide an income to the Trustee to enable it to at least contribute to the maintenance of the Park.
- 4.11 When considering the options in 4.10 the Trustee is asked to bear in mind that the Council has the skills, public knowledge and expertise to manage trusts of this nature and, as such, it is officers' view that that neither options are practical.
- 4.12 Cabinet as Trustee will therefore need to decide whether leasing the Hall to Caerphilly Aged Pensioners Welfare Committee will be in the best interests of the charity assuming of course that it can comply with all requirements for a disposal of charitable land.
- 4.13 It may be that there are more financially advantageous options available to the Charity, such as:
- 4.13.1 Selling the Hall on the open market subject to the relevant consents from the Charity Commission.
- 4.13.2 Demolishing the Hall and reinstating the land to recreation ground. However, this option would incur costs as a result of the demolition and therefore this option would not be a financial benefit to the Charity.
- 4.13.3 Retaining possession and making use of the Hall for the purpose of the Charity, (as set out in paragraph 4.1) although regard should be had to the maintenance and ongoing liability of the Hall. In this respect a condition report was commissioned, which is available in the Background Papers; the report notes that a number of improvements have been made over recent times, both internally and externally, but that some areas (such as the main hall ceiling and WC facilities) are showing signs of wear and tear and are nearing the end of their life expectancy.
- 4.13.4 Renting the Hall on the open market.
- 4.14 If, having considered the above, members are minded to remain as Trustee and consider that it is in the Trust's best interest to dispose of the Hall either by lease or sale then the provisions of Part 7 of the Charities Act 2011 relating to the restrictions on dispositions of trust land and the specific requirements in the Charities (Qualified Surveyors Reports) Regulations 1992 (the Regulations) must be considered.
- 4.15 Part 7 of the Charities Act 2011 (the Act), section 117 sets out certain restrictions on disposing of charity land. Generally, no land held on charitable trust can be disposed of without an order of the Court or the Charity Commission. However this may be dispensed with if the Trustees before entering into an agreement for the sale or lease or other transfer of land comply with the relevant provisions of Sections 117 to 119 of the Act which include obtaining a report from a qualified surveyor and advertising the proposed transfer if necessary. An extract of Part 7 of the Charities Act 2011 is included in Appendix 3 to this report.
- 4.16 The statutory requirements in relation to the appointment of a qualified surveyor do not preclude the appointment of an internal valuer. Additionally, the surveyor's report must contain specific information as prescribed in regulations.

- 4.17 As the Dafydd Williams Park is considered designated land, i.e. land held for a specific purpose, additional statutory requirements contained in Section 121 of Part 7 of the Act must be considered (see extracts of legislation in Appendix 3) unless certain exemptions apply, or the Charity Commission agrees to waive the requirements. It may be that an order or scheme needs to be granted or made by the Charity Commission to change the object of the charity in order to authorise a disposal or change of use. An order or scheme will not normally be required where replacement land is being provided, or if the sale is of a relatively small area and would not substantially interfere with the use of the land for recreational use. The Trustee's attention is drawn to the fact that the area of land occupied by the Hall comprises some 2% of the total area of land subject to the charitable trust; it might be argued that this is a disposal of a relatively small area and would not substantially interfere with the use of the land for recreational use. However, there appears to be no guidance on what is significant, although the Charity Commission does give an example whereby an insignificant disposal could be due to a boundary rectification following a dispute or grant of a right of way. The Charity Commission has indicated previously that a disposal must not prevent the furthering of the object of the charity as a public recreation ground. This is a decision for Cabinet as Trustee. These provisions also do not apply where the lease term to be granted is not more than two years.
- 4.18 If Cabinet as Trustee was of the view that the area of land occupied by the Hall is de minimus and a disposal would not prevent the furthering of the object of the charity as outlined above, subject to consideration of a surveyors report, they may consider it appropriate to authorise the Head of Legal Services and Monitoring Officer to undertake the relevant processes set out in paragraphs 4.17. This issue would however be the subject of a further decision following consideration of a surveyors report.
- 4.19 As mentioned above, as the land is designated land, the Council, as Trustee, will be required to give public notice of the proposal by putting a sign on site and by advertising in a local newspaper and will be required to take into consideration any representations made to it about any proposed sale or lease unless the Charity Commission waives the requirement, if it is in the best interests of the Charity. This is likely to be the case where there has already been public discussion, or the Trust itself imposes a more onerous duty, or where the disposal is only a very small part of the land (as per the above examples) and will not affect the ability to carry out the purpose of the charity (in this latter context, see paragraph 4.17 above).
- 4.20 In order for the Trustee to make a decision on how best to take the matter forward further information is required. A surveyor's report compliant with the Regulations referred to in paragraph 4.14 and exploring the financial benefit or burden of all options should first be considered. This report can be provided by a Valuer within the Council's Property Services so as to provide a basis on which to seek the Trustee's view. The surveyor's report will cover all options and make recommendations in the best interests of the Charity.
- 4.21 Upon receipt a further report will be provided to Cabinet as Trustee. The report will include all options available for consideration by the Trustee.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 There are no equalities implications as the Trustee has a duty to consider the statutory requirements when considering the use of the Dafydd Williams Park Caerphilly.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 There will be financial implications as a result of the need to obtain a Surveyor's report in accordance with the Regulations referred to in paragraph 4.14 of the report and the inspection of the Hall. Property Services is prepared to provide the surveyors report and can absorb the cost of doing so.

## **7. PERSONNEL IMPLICATIONS**

7.1 None arising from the report.

## **8. CONSULTATIONS**

8.1 The report reflects the views of the consultees listed.

## **9. RECOMMENDATIONS**

9.1 To note the content of the report.

9.2 For the reasons set out in paragraph 4.11 it is recommended that the Council remain as Trustee of the Park.

9.3 For the reasons set out in paragraph 4.6 of the report to note that the recommendations in the Report to Cabinet dated 29th September 2009 were not implemented.

9.4 To commission a surveyor's report compliant with the Charities (Qualified Surveyors Reports) Regulations 1992, to explore the financial benefit or burden of all options regarding the future use of the Neuadd y Parc Hall, the outcome of which is to be reported back to the Trustees.

9.5 To note that a further report will be presented as set out in paragraph 4.18 of this report.

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 To fully consider the options available to Trustees in connection with the use of Neuadd y Parc Hall.

## **11. STATUTORY POWER**

11.1 Charities Act 2011 and Charities (Qualified Surveyors Reports) Regulations 1992.

Author: Lisa Lane Solicitor

Consultees: Nicole Scammel Acting Director of Corporate Services/Section 151 Officer  
Gail Williams Interim Head of Legal Services and Monitoring Officer  
Colin Jones Head of Performance and Property  
Tim Broadhurst Section Head Estates  
Richard Crane Senior Solicitor

Background Papers:

Executive Summary and Condition Survey Report – Neuadd y Parc Hall

Appendices:

Appendix 1 Plan of Dafydd Williams Park and Hall  
Appendix 2 Report to Cabinet 29th September 2009  
Appendix 3 Extracts of Legislation

This page is intentionally left blank



H.M. LAND REGISTRY

WA 670591

ORDNANCE SURVEY  
PLAN REFERENCE

ST1586 NE/NW

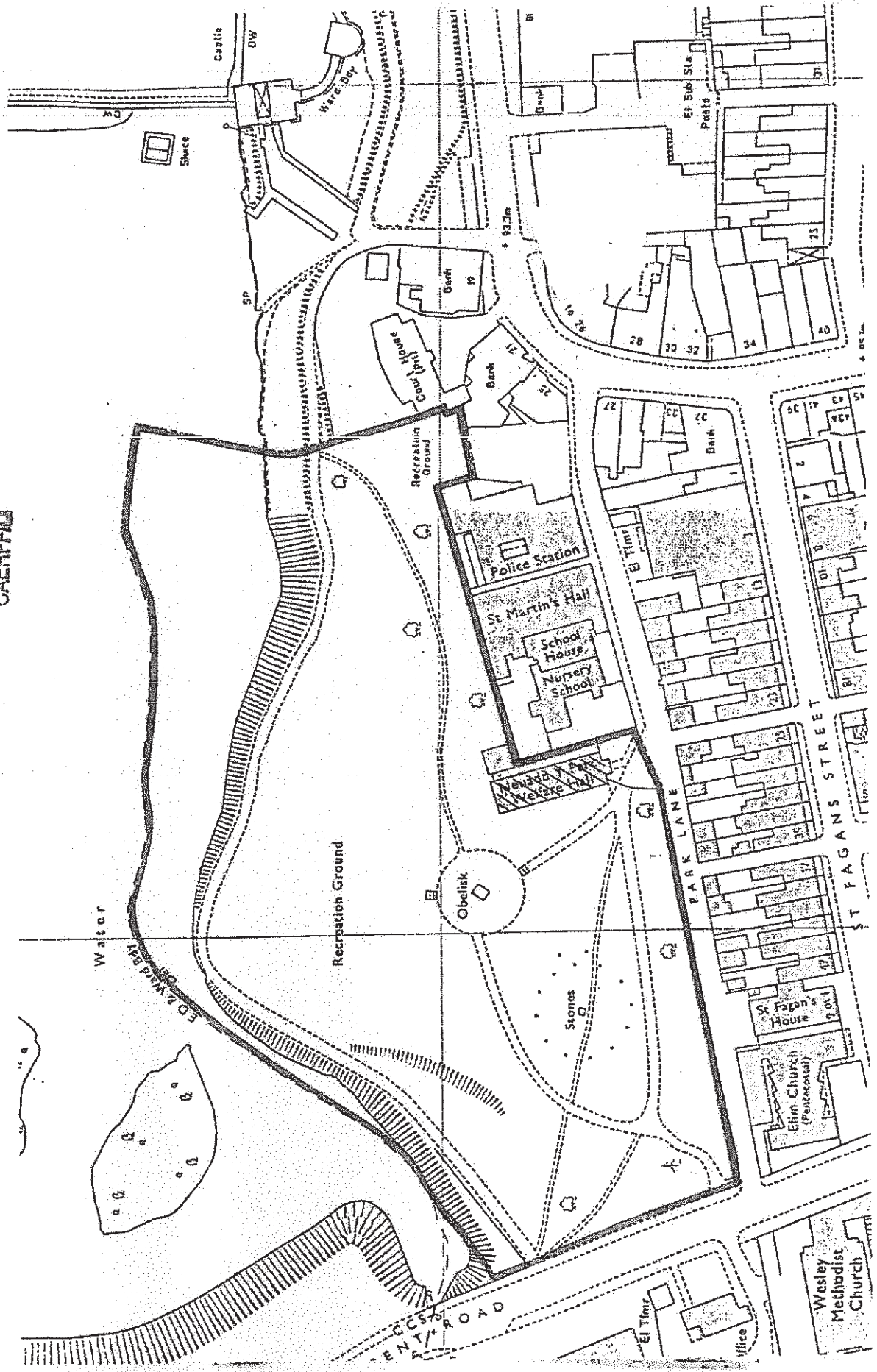
Scale  
1/1250

COUNTY MID GLAMORGAN

DISTRICT RHYMNEY VALLEY

© Crown Copyright

PHILLY  
ADMINISTRATIVE AREA CAERFFILU



This page is intentionally left blank



## CABINET – 29TH SEPTEMBER 2009

**SUBJECT: NEUADD Y PARC HALL, PARK LANE, CAERPHILLY**

**REPORT BY: DIRECTOR OF EDUCATION**

---

### **1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to gain the approval of Cabinet to grant a lease of Neuadd y Parc Hall to the Caerphilly Aged Persons Welfare Committee, a Registered Charity.

### **2. SUMMARY**

- 2.1 The Council has been approached by the Caerphilly Aged Persons Welfare Committee regarding the possible transfer of the premises to that organisation. This report outlines the detail and options open to the Council.

### **3. LINKS TO STRATEGY**

- 3.1 To maintain the operation of an important community asset.

### **4. THE REPORT**

- 4.1 Neuadd y Parc Hall is situated within the David Williams Park, adjacent to Park Lane, Caerphilly. The Hall and Parkland is land held by the Council upon Charitable Trusts established at the time the land was originally passed to the Councils predecessor in title the former Caerphilly Urban District Council. The Council has been informed that the hall was built in approximately 1953 by the original trustees of the Caerphilly Aged Persons Welfare Committee.
- 4.2 The Caerphilly Aged Persons Welfare Committee has appointed new holding trustees and has expressed an interest in taking a lease on the Hall. The association is keen to draw down funding to improve and develop the facility, for which a long-term lease will be essential.
- 4.3 Now that the Council has established that the Hall is Held upon Charitable Trusts any intended Lease on the Hall will be a disposal within the meaning of, and will require to be granted in accordance with Section 36 of the Charities Act 1993. To comply with Section 36 the Council is obliged to obtain a Valuation Report setting out the market value of the Land to be transferred. An independent valuation Report has been obtained setting out various options available to the Council for its consideration. One of the options is for the grant of a lease to the Caerphilly Aged Persons Welfare Committee for a term of 25 years on a full repairing and insuring basis at an annual rental of £4,500.
- 4.4 This option has been discussed with the Caerphilly Aged Persons Welfare Committee who would be agreeable to proceed on this basis. To enable it to take a Lease on the Hall the Caerphilly Aged Persons Welfare Committee has asked if the Council could consider offering it financial assistance to offset the cost of the proposed annual rental.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 The Council currently spends £22,657k (2009/10) per annum in maintaining the David Williams Park. £4.5k of this budget could be offered to the Caerphilly Aged Persons Welfare Committee as grant aid, this rental would then be paid to the Council, as Trustee and the sum would then be spent on maintenance of the Charitable Land in accordance with the Charitable Trusts.

## **6. PERSONNEL IMPLICATIONS**

- 6.1 There are no personnel implications arising out of the issues contained within this report.

## **7. CONSULTATIONS**

- 7.1 Consultations have taken place with Dan Perkins – Head of Legal Services, Nicole Scammell – Head of Corporate Finance, Phil Evans – Head of Property & ICT, Cabinet Member for Education and Leisure – Cllr P Bevan, Local Ward Members – Cllr S Kent, Cllr C Elsbury & Cllr J Fussell. All are in agreement with the recommendations contained within the report.

## **8. RECOMMENDATIONS**

- (a) The Council leases Neuadd y Parc Hall to the Caerphilly Aged Persons Welfare Committee for a term of 25 years on a full repairing and insuring basis at an annual rental of £4,500.
- (b) The rental funding is granted to the Caerphilly Aged Persons Welfare Committee.
- (c) On payment of the rental to the Council the income is expended on the Dafydd Williams Park.

## **9. REASONS FOR THE RECOMMENDATIONS**

- 9.1 To ensure that the Neuadd-y-Parc Hall continues to be leased to the Caerphilly Aged Persons Welfare Committee for the benefit of the community.

## **10. STATUTORY POWER**

- 10.1 Local Government Act 1972. This is a Cabinet function.

Author: Peter Gomer - Assistant Director for Community & Leisure  
[gomerp@caerphilly.gov.uk](mailto:gomerp@caerphilly.gov.uk)

Consultees: As set out in Section 7 of this report.

Background Papers:  
None

This recommendation is endorsed by the Corporate Management Team



**PART 7**  
**CHARITY LAND**

*Restrictions on dispositions of land in England and Wales*

Law In Force

**117 Restrictions on dispositions of land: general**

(1) No land held by or in trust for a charity is to be conveyed, transferred, leased or otherwise disposed of without an order of—

- (a) the court, or
- (b) the Commission.

But this is subject to the following provisions of this section, sections 119 to 121 (further provisions about restrictions on dispositions) and section 127 (release of charity rentcharges).

(2) Subsection (1) does not apply to a disposition of such land if—

- (a) the disposition is made to a person who is not—
  - (i) a connected person (as defined in section 118), or
  - (ii) a trustee for, or nominee of, a connected person, and
- (b) the requirements of—
  - (i) section 119(1) (dispositions other than certain leases), or
  - (ii) section 120(2) (leases which are for 7 years or less etc.),
 have been complied with in relation to it.

(3) The restrictions on disposition imposed by this section and sections 119 to 121 apply regardless of anything in the trusts of a charity; but nothing in this section or sections 119 to 121 applies to—

- (a) any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by—
  - (i) any statutory provision contained in or having effect under an Act, or
  - (ii) any scheme legally established,
- (b) any disposition for which the authorisation or consent of the Secretary of State is required under the Universities and College Estates Act 1925,
- (c) any disposition of land held by or in trust for a charity which—
  - (i) is made to another charity otherwise than for the best price that can reasonably be obtained, and
  - (ii) is authorised to be so made by the trusts of the first-mentioned charity, or
- (d) the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—
  - (i) is granted otherwise than for the best rent that can reasonably be obtained, and
  - (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.

(4) Nothing in this section or sections 119 to 121 applies to—

- (a) any disposition of land held by or in trust for an exempt charity,



- (b) any disposition of land by way of mortgage or other security, or
- (c) any disposition of an advowson.

**Commencement**

Pt 7 s. 117(1)-(4)(c): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

**Extent**

Pt 7 s. 117(1)-(4)(c): England, Wales

Law In Force

**118 Meaning of “connected person” in s.117(2)**

(1) In section 117(2) “connected person”, in relation to a charity, means any person who falls within subsection (2)—

- (a) at the time of the disposition in question, or
- (b) at the time of any contract for the disposition in question.

(2) The persons are—

- (a) a charity trustee or trustee for the charity,
- (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity),
- (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor,
- (d) an officer, agent or employee of the charity,
- (e) the spouse or civil partner of any person falling within any of paragraphs (a) to (d),
- (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e),
- (g) an institution which is controlled—
  - (i) by any person falling within any of paragraphs (a) to (f), or
  - (ii) by two or more such persons taken together, or
- (h) a body corporate in which—
  - (i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or
  - (ii) two or more such persons, taken together, have a substantial interest.

(3) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (2).

**Commencement**

Pt 7 s. 118(1)-(3): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

**Extent**

Pt 7 s. 118(1)-(3): England, Wales



Law In Force

### 119 Requirements for dispositions other than certain leases

(1) The requirements mentioned in section 117(2)(b) are that the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—

- (a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity,
- (b) advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and
- (c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(2) Subsection (1) does not apply where the proposed disposition is the granting of such a lease as is mentioned in section 120(1).

(3) For the purposes of subsection (1) a qualified surveyor is a person who—

- (a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfies such other requirement or requirements as may be prescribed by regulations made by the Minister, and
- (b) is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question.

(4) Any report prepared for the purposes of subsection (1) must contain such information, and deal with such matters, as may be prescribed by regulations made by the Minister.

---

#### Commencement

Pt 7 s. 119(1)-(4): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

#### Extent

Pt 7 s. 119(1)-(4): England, Wales

---

Law In Force

### 120 Requirements for leases which are for 7 years or less etc.

(1) Subsection (2) applies where the proposed disposition is the granting of a lease for a term ending not more than 7 years after it is granted (other than one granted wholly or partly in consideration of a fine).

(2) The requirements mentioned in section 117(2)(b) are that the charity trustees must, before entering into an agreement for the lease—

- (a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition, and



(b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

---

**Commencement**

Pt 7 s. 120(1)-(2)(b): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

**Extent**

Pt 7 s. 120(1)-(2)(b): England, Wales

---

Law In Force

**121 Additional restrictions where land held for stipulated purposes**

(1) Subsection (2) applies where—

- (a) any land is held by or in trust for a charity, and
- (b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity.

(2) The land must not be conveyed, transferred, leased or otherwise disposed of unless the charity trustees have before the relevant time—

- (a) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, which must be not less than one month from the date of the notice, and
- (b) taken into consideration any representations made to them within that time about the proposed disposition.

(3) Subsection (2)—

- (a) is subject to subsections (5) and (6), and
- (b) does not affect the operation of sections 117 to 120.

(4) In subsection (2) “the relevant time” means—

- (a) where the charity trustees enter into an agreement for the sale, or (as the case may be) for the lease or other disposition, the time when they enter into that agreement, and
- (b) in any other case, the time of the disposition.

(5) Subsection (2) does not apply to any such disposition of land as is there mentioned if—

- (a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in subsection (1)(b), or
- (b) the disposition is the granting of a lease for a term ending not more than 2 years after it is granted (other than one granted wholly or partly in consideration of a fine).

(6) The Commission may, if the condition in subsection (7) is met, direct—

- (a) that subsection (2) is not to apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or
- (b) that subsection (2) is not to apply to a particular disposition of land held by or in trust for a charity.



(7) The condition is that the Commission, on an application made to it in writing by or behalf of the charity or charities in question, is satisfied that it would be in the interests of the charity or charities for the Commission to give the direction.

---

**Commencement**

Pt 7 s. 121(1)-(7): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

**Extent**

Pt 7 s. 121(1)-(7): England, Wales

---

Law In Force

**122 Instruments concerning dispositions of land: required statements, etc.**

- (1) Subsection (2) applies to any of the following instruments—
- (a) a contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and
  - (b) a conveyance, transfer, lease or other instrument effecting a disposition of such land.
- (2) An instrument to which this subsection applies must state—
- (a) that the land is held by or in trust for a charity,
  - (b) whether the charity is an exempt charity and whether the disposition is one falling within section 117(3)(a), (b), (c) or (d), and
  - (c) if it is not an exempt charity and the disposition is not one falling within section 117(3)(a), (b), (c) or (d), that the land is land to which the restrictions on disposition imposed by sections 117 to 121 apply.
- (3) Where any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which section 117(1) or (2) applies, the charity trustees must certify in the instrument by which the disposition is effected—
- (a) (where section 117(1) applies) that the disposition has been sanctioned by an order of the court or of the Commission (as the case may be), or
  - (b) (where section 117(2) applies) that the charity trustees have power under the trusts of the charity to effect the disposition and have complied with sections 117 to 121 so far as applicable to it.
- (4) Where subsection (3) has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money's worth, it is conclusively presumed that the facts were as stated in the certificate.
- (5) Subsection (6) applies where—
- (a) any land held by or in trust for a charity is conveyed, transferred, leased or otherwise disposed of by a disposition to which section 117(1) or (2) applies, but
  - (b) subsection (3) has not been complied with in relation to the disposition.
- (6) In favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money's worth, the disposition is valid whether or not—
- (a) the disposition has been sanctioned by an order of the court or of the Commission, or



- (b) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with sections 117 to 121 so far as applicable to it.
- (7) Subsection (8) applies to any of the following instruments—
- (a) a contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and
  - (b) a conveyance, transfer, lease or other instrument effecting a disposition of such land.
- (8) An instrument to which this subsection applies must state—
- (a) that the land will, as a result of the disposition, be held by or in trust for a charity,
  - (b) whether the charity is an exempt charity, and
  - (c) if it is not an exempt charity, that the restrictions on disposition imposed by sections 117 to 121 will apply to the land (subject to section 117(3)).
- (9) In this section and section 123 references to a disposition of land do not include references to—
- (a) a disposition of land by way of mortgage or other security,
  - (b) any disposition of an advowson, or
  - (c) any release of a rentcharge falling within section 127(1).

---

#### Commencement

Pt 7 s. 122(1)-(9)(c): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

#### Extent

Pt 7 s. 122(1)-(9)(c): England, Wales

---

#### Law In Force

### 123 Charity land and land registration

- (1) Where the disposition to be effected by any such instrument as is mentioned in section 122(1)(b) or (7)(b) will be—
- (a) a registrable disposition, or
  - (b) a disposition which triggers the requirement of registration,
- the statement which, by virtue of section 122(2) or (8), is to be contained in the instrument must be in such form as may be prescribed by land registration rules.
- (2) Where the registrar approves an application for registration of—
- (a) a disposition of registered land, or
  - (b) a person's title under a disposition of unregistered land,
- and the instrument effecting the disposition contains a statement complying with section 122(8) and subsection (1), the registrar must enter in the register a restriction reflecting the limitation under sections 117 to 121 on subsequent disposal.
- (3) Where—
- (a) any such restriction is entered in the register in respect of any land, and
  - (b) the charity by or in trust for which the land is held becomes an exempt charity,
- the charity trustees must apply to the registrar for the removal of the entry.



(4) On receiving any application duly made under subsection (3) the registrar must remove the entry.

(5) Where—

(a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or

(b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity),

the charity trustees must apply to the registrar for such a restriction as is mentioned in subsection (2) to be entered in the register in respect of the land.

(6) On receiving any application duly made under subsection (5) the registrar must enter such a restriction in the register in respect of the land.

---

**Commencement**

Pt 7 s. 123(1)-(6): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

**Extent**

Pt 7 s. 123(1)-(6): England, Wales

---

*Restrictions on mortgages of land in England and Wales*

Law In Force

**124 Restrictions on mortgages**

(1) Subject to subsection (2), no mortgage of land held by or in trust for a charity is to be granted without an order of—

(a) the court, or

(b) the Commission.

(2) Subsection (1) does not apply to a mortgage of any such land if the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the relevant matters or matter mentioned in subsection (3) or (4) (as the case may be).

(3) In the case of a mortgage to secure the repayment of a proposed loan or grant, the relevant matters are—

(a) whether the loan or grant is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which they are seeking the loan or grant,

(b) whether the terms of the loan or grant are reasonable having regard to the status of the charity as the prospective recipient of the loan or grant, and

(c) the ability of the charity to repay on those terms the sum proposed to be paid by way of loan or grant.



(4) In the case of a mortgage to secure the discharge of any other proposed obligation, the relevant matter is whether it is reasonable for the charity trustees to undertake to discharge the obligation, having regard to the charity's purposes.

(5) Subsection (3) or (as the case may be) subsection (4) applies in relation to such a mortgage as is mentioned in that subsection whether the mortgage—

(a) would only have effect to secure the repayment of the proposed loan or grant or the discharge of the proposed obligation, or

(b) would also have effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(6) Subsection (7) applies where—

(a) the charity trustees of a charity have executed a mortgage of land held by or in trust for a charity in accordance with subsection (2), and

(b) the mortgage has effect to secure the repayment of sums paid by way of loan or grant, or the discharge of other obligations undertaken, after the date of its execution.

(7) In such a case, the charity trustees must not after that date enter into any transaction involving—

(a) the payment of any such sums, or

(b) the undertaking of any such obligations,

unless they have, before entering into the transaction, obtained and considered proper advice, given to them in writing, on the matters or matter mentioned in subsection (3)(a) to (c) or (4) (as the case may be).

(8) For the purposes of this section proper advice is the advice of a person—

(a) who is reasonably believed by the charity trustees to be qualified by ability in and practical experience of financial matters, and

(b) who has no financial interest in relation to the loan, grant or other transaction in connection with which the advice is given;

and such advice may constitute proper advice for those purposes even though the person giving it does so in the course of employment as an officer or employee of the charity or of the charity trustees.

(9) This section applies regardless of anything in the trusts of a charity; but nothing in this section applies to any mortgage—

(a) for which general or special authority is given as mentioned in section 117(3)(a), or

(b) for which the authorisation or consent of the Secretary of State is required as mentioned in section 117(3)(b).

(10) Nothing in this section applies to an exempt charity.

---

**Commencement**

Pt 7 s. 124(1)-(10): March 14, 2012 (2011 c. 25 Pt 19 s. 355)

**Extent**

Pt 7 s. 124(1)-(10): England, Wales

---