



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

SUBJECT: NEUADD Y PARC HALL - DAIFYDD 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