

MEETING

COUNCIL AS TRUSTEE

DATE AND TIME

TUESDAY 5TH MARCH, 2019

AT 7.00 PM

VENUE

HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ

Dear Councillors,

Please find enclosed questions to trustees and responses in relation to the above meeting in respect of Victoria Park Trust.

Some questions have requested legal documents. These have been sent to the questioner. Due to the number and size of the documents, these are available to trustees on request from the Governance Service.

Kind regards,

Andrew

Andrew Charlwood, andrew.charlwood@barnet.gov.uk, 020 8359 2014

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Mary O'Connor

1. Can copies of all legal documents for Victoria Recreation Ground from when sections of the now Victoria Park were first purchased by trustees to be given to the Finchley Urban District Council (1898) until today be provided before 5 March 2019? These will include the purchase of the four blocks, the gifting of the first two to the Finchley Urban District Council and deeds signed and sealed with the Middlesex County Council. There may be other legal documents. Why have these not all been supplied to Land Registry?

According to legal and estates records, the documents related to the freehold listed on the attached form DL were sent to the Land Registry when the Council applied to register title to Victoria Park, in 2012. The title to the park was registered by the Land Registry in 2012. The Lodge was conveyed to the buyer in 2016 on the basis of that title; a copy of the land registers issued in 2012 is attached – it has since been updated to reflect the sale of the Lodge. The Land Registry do not automatically make notes on the register in relation to all the documents supplied to them. The register of title at the Land Registry refers to three documents which were not supplied on first registration; they were not supplied because the Council does not have copies of them with its deeds.

Copies are attached, other than the agreements dated 30 May 1987 and 4 February 1920 which cannot be located with the council's deeds at present.

2. In 1899, Middlesex County Council agreed to contribute one fourth the cost of the purchase of 16 ½ acres of land, known as the Victoria Recreation Ground, to Finchley Urban District Council subject, "to the whole of the 16 ½ acres being dedicated as an open space for ever". The Finchley Urban District Council happily dedicated and sealed all this land as public open space forever. These Councils were both the statutory predecessors of the London Borough of Barnet. Hence, is the London Borough of Barnet bound by this dedication? Do the trustees have a duty, both morally and legally, to respect this and so keep all of Victoria Park as public open space forever?

The Council's deeds include a conveyance dated 1899; it does not mention Middlesex County Council. The Council's deeds include an agreement dated 13 April 1935 made between Middlesex County Council and the Mayor, Aldermen and Burgesses of the Borough of Finchley in which Middlesex County Council agreed to contribute one quarter of the cost of purchasing 0.375 of an acre of land (copy included in reply to question 1). This document relates to a part of the Park, shown coloured pink and in part hatched on the plan in the agreement, which does not include the Lodge and which has not been sold. The 1935 agreement and the conveyance by which the Council acquired this land, do not mention or create a trust, so the Council owns it as local authority rather than trustee.

3. When Barnet Council was formed were there binding agreements to preserve public assets belonging to Finchley Borough Council? If so, can copies be made available before 5 March 2019.

Property of Finchley Council (subject to various exceptions, which do not apply to this property) transferred to Barnet Council under article 16 and schedule 4 of a statutory instrument, the London Authorities (Property etc) Order 1964. A copy is attached. All

liabilities transferred with the property and the Order does not create new liabilities in relation to property. Liabilities owed to Middlesex County Council are also dealt with in the same Order, and passed to a number of bodies.

4. Before the 4 November 2014 Council Meeting was there an on site visit arranged for trustees to be able to view The Lodge, Victoria Park and surroundings? Alternatively, was there an opportunity for any trustee to have access to inside The Lodge prior to the November 2014 Council Meeting?

Whilst there is no record of an invitation to Trustees/Councillors in advance of the 4th November 2014 to visit the Victoria Lodge, there were many opportunities for Trustees/Councillors to visit the site following the Council's deliberations, either before local agents were appointed to market the property or during the period in which the property was being offered on the market for sale.

5. In the 4 November 2014 Council Meeting, councillors were told to vote as trustees, but they had to be Councillors in order to vote in a Council meeting. Is this a "conflict of interest"?

The councillors are the trustees so they are the ones that are able to vote.

6. Did the trustees satisfy the Charities Act when all trustees did not read the approximate 600 objections to the sale in the form of letters, emails and petitions? The Summary DPR had a Barnet employee state that it was a "good thing" to sell. All further decisions regarding whether a sale or long lease and any restrictions to be imposed on the site, plus drawing up and signing the sale documents were done by council employees or contracted agencies. Were the trustees made aware of the decisions being made on their behalf?

The Council authorised the Chief Operating Officer to deal with these matters.

7. In the Charity Commission document https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351608/council_as_charity_trustee_overview.pdf toward the bottom of page 2 is *Where a local authority is a trustee of the charity, it is the corporate body, acting in accordance with its usual procedures, which is "the trustee". While ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the Councillors*

How was it acceptable for officers to sight the approximately 600 objections, negotiate whether the disposal would be a sale or long lease, agree no restrictions or impose restrictions to protect park users and the local streetscape, accept the offer amount and legal documents, sign the sale documents, without the involvement of all the trustees who had these responsibilities?

The Council authorised the Chief Operating Officer to deal with these matters. The agreement of the Charity Commission was sought and received in relation to the sale of the Lodge.

8. What are the rules of the trust? Do they contain any restraints? Please supply a copy. Where in the rules does it state that The Lodge could only be used for the requirement of a park keeper?

Please see the documents mentioned in the reply to question 1, in particular the conveyances dated 26 December 1899 and 9 August 1898 which refer to the trust. The Council does not have any other trust document. This question may be referring to the report to Council in November 2014; while the Lodge was within the trust, the trust meant that it could not be used as a residence unconnected with the park.

9. What are the documents that the trust must obey? Please supply a copy and show where The Lodge cannot be used except for the requirement of a park keeper and where it permits the sale of part of Victoria Park which has been declared to all be a public open space forever.

Please see the documents mentioned in the reply to question 1 and the reply to question 8.

10. In the 15th January 2015 Finchley and Golders Green Residents Forum, the response to Issue 10 when questioned where in the documents The Lodge could not be used other than for a park-keeper, was, "No 1 of the reservations, restrictions and conditions on the bottom of page two of the conveyance dated 9th August 1988 deals with the restriction." This refers to the Restrictive Covenant and in my opinion a tighter restriction than the wording of the Restrictive Covenant which also had "or other building to be used in connection with the use of the heraldments hereby granted as a recreation ground". HB Public Law gave inaccurate information. What compensation can be claimed from them?

The response given to the Residents Forum was correct, given that the question asked where conveyances dated 9th August 1898 and 13 February 1900 say that the Lodge cannot be used for housing accommodation, other than a park keepers lodge. Inaccurate information was not given by HB Public Law.

11. When Maunder Taylor marketed The Lodge, were they instructed that there may be restrictions imposed on any building that may replace The Lodge, or on the number of separate dwellings that may be permitted on the site? Please can a copy of the marketing brochure or conditions of sale before 5th March 2019. Why were no restrictions placed on the sale to ensure no development where the park in general and particularly the playground would not be overlooked, and only one dwelling, or similar to protect Victoria Park?

A copy of the marketing brochure is attached. There is no evidence that restrictions were placed on the sale of the Lodge and the marketing brochure does not refer to any. Any purchaser would have had to satisfy the Local Planning Authority that any proposals for future use or development were in keeping with the surroundings. In addition, restrictions on the sale may have reduced the sale price, which the Council was duty bound to maximise. The transfer of the Lodge in 2016 was subject to existing restrictions; buyers of property must seek their own legal advice on the effect of any such.

12. In the 4 November 2014 Council meeting, Item 14 Report of the Chief Operating Officer with regard to The Lodge, why were other alternative options not included in the report? Why was there no option for The Lodge to have a change of use? It could have been leased for childcare or a cafe. If The Lodge could not have been repaired (since demonstrated that it could be for less than £10,000) why was demolishing and returning the site to parkland not considered? The Charity Commission stated it could not be used for social housing as it had been, as that did not benefit Victoria Park. But if it was repaired and let at market rates for

an income for Victoria Park, such income to be used for the park, would that have been acceptable?

An alternative option was mentioned at paragraph 3 of the report to Council on 4 November 2014, namely purchase by Barnet Homes. Barnet Homes did consider in 2014 whether the Lodge would be a property they could develop for social housing but decided that the necessary investment (£100,000) would result in the project being unviable.

13. Why are documents presented to councillors at meetings without reasonable justification for statements made? Who estimated that The Lodge would cost £100,000 to be brought to Decent Homes Standard?

The Property Services and Valuation Team assessed the cost of refurbishment at £100,000. This assessment was made by the Council's professional property team at the time

Theresa Musgrove

1. Why does the council not advise and remind residents of their right to put questions to Full Council Meetings?

This clause within the Procedure for Full Council is obsolete and is under consideration for deletion. It has not been used for many years. Residents who wish to raise questions can now do so under the Freedom of Information Act or raise matters with their elected Councillors.

2. Why did the Monitoring Officer not know that this right is included within the council's Constitution, when my questions to the last one were refused?

Your questions were not refused, but they were not submitted in time.

3. Why are you now referring to the hastily convened meeting before Full Council to approve money gained from the sale of part of Victoria Park as 'Meeting as Trustee', singular, when your aborted meeting last time referred to it as Meeting as Trustees', plural?

The Council is Corporate Trustee made up of 63 Councillors.

4. What risk assessment has been made of the decision to use this mechanism, ie a separate meeting in a form that has not been formally adopted by the Constitution?

The Constitution is the Constitution of the London Borough of Barnet which is legally separate from the Victoria Park Trust.

5. What risk assessment has been made of the conflict of interest inherent in any decision regarding the Trust being taken by members also voting as members of a committee that approved the sale of part of the park?

The Monitoring Officer has advised that the Councillors who voted as Councillors at the Environment Committee in November when it approved the Master Plan for the Park should not vote as Trustees when the Master Plan is considered for approval by the Trustees.

6. Why are written questions now allowed to Full Council, but not questions allowed to be submitted directly to the 'Meeting as Trustee' itself? Is it because the 'Meeting as Trustee' has no lawful, or Constitutional basis?

Questions are currently permitted to both within the time constraints in the procedure rules.

7. Please publish the full results of the 'consultation' regarding the Master Plan: those who participated in this loaded questionnaire have a right to see the data outcome.

The consultation results form part of the papers before the meeting of Council as Trustee.

8. It was acknowledged in November last year that the survey itself was flawed due to participants being compelled to agree with a pre-loaded conclusion, rather than offer any alternative: why should members now vote on the basis of a consultation that was created entirely to legitimise the use of money that has accrued from a sale that should never have taken place?

The Trustees are advised that they acted lawfully regarding the sale of the Lodge in the Park and in respect of the Master Plan.

9. Apart from Darlands, how many other pieces of public open space does the Tory administration intend to put up for sale, now that a precedent has been set for the attempted exploitation of parks and community spaces?

The Council will continue to act in the best interests of the Barnet community.

Beverly

1. What did Groundwork London do to justify the £35,858 they were paid for this "flawed consultation" when the consultation sessions in Victoria Park were conducted by Barnet Council staff? How was it value for money?

Groundwork London did not undertake the eight week public consultation this exercise was completed by the Greenspaces Team alone.

The Council's contract with Groundwork London was to undertake an appraisal of options for improvements Victoria Park. They were to present design options based on local need and interest, in order to inform these concepts and options Groundwork London undertook a number of engagement activities and used the data they collected to inform the overall Master Plan design and the two options which were presented as part of the Council's full public consultation.

Groundwork London were procured through an open tender process from which three bids were received. All the bids were assessed 50% on price and 50% on quality, Groundwork London won the tender overall offering the cheapest tender and the highest quality score.

2. Playgrounds in other parks are renewed without selling off an area of a park. Why did The Lodge have to be sold to get a new playground?

A decision was taken by Council as Trustee to dispose of the Lodge and for the proceeds to be used for future running costs and improvements.

3. The consultation did not explain that if there was a new cafe to be built with toilets that they would only be available when the cafe is open. What are park users to do outside the cafe hours if they need a toilet? In the report is "5.6.4 An equalities impact assessment was carried out on the Victoria Park Master Plan. This shows that the proposed Master Plan is expected to make a positive change". How can this be if the toilets are to be available less hours.

One of the key issues raised through Groundwork London's engagement activities and the main consultation was the cleanliness and management of the current toilet facilities. Due to their location they suffer regularly from vandalism, anti-social behaviour and are often removed from use whilst repairs are undertaken. Elsewhere in the borough where the toilets have become managed by the café operator we have seen a reduction in vandalism and an improvement in cleanliness. With this approach we can ensure a better quality of provision is available to genuine parks users.

4. Where is the financial plan to demonstrate that a new cafe is financially desirable? Who will benefit.

The proposal to enhance the existing catering offer to a café with indoor seating came from Groundwork London's engagement and in the main consultation with the provision of a New Café with indoor toilets scored in the top two investment priorities for Victoria Park.

5. This Master Plan is increasing the amount of asphalt in Victoria Park. With the acceleration of global warming, should we not attempt to reserve our natural world wherever possible? Why is this necessary in Victoria Park? If vehicles were smaller, this would not be necessary. Why not use lighter/smaller vehicles in Victoria Park, and perhaps all parks? Maybe golf buggy type vehicles should be seriously considered for use inside the park.

The Council's Grounds Maintenance service has standard vehicles that are used across the whole borough it is not feasible to replace for one with smaller wheel base without affecting service delivery or increasing resource costs.

6. Why is it considered necessary for a separate meeting of trustees to be held to approve spending the funds from the sale of The Lodge when no such meeting was held to vote whether to sell The Lodge or not? How was it acceptable to hold the vote as trustees to sell The Lodge in a Council meeting, where Councillors had to be Councillors first in order to vote in the meeting, so trustees second?

For the sake of transparency, the Council has moved to a practice of having a separate meeting of Council as Trustee. When the decision to dispose of the Lodge was taken on 4th November 2014, the Council was acting as Trustee and the report to Council made that clear (i.e. the resolution states: "RESOLVED that Council, as Trustee of the Victoria Park Trust...") Holding the trustee meeting as a separate entity has no impact on the legality of 2014 decision.

7. What involvement have the trustees had in the process of the sale, including deciding whether an outright sale or a long-lease was the preferred option, whether there should be

any conditions placed on The Lodge site to protect the rest of Victoria Park, and the signing of the official sale documents?

In November 2014 Council as Trustee considered the matter at the Council meeting and delegated authority to an officer to determine the optimal disposal approach, with professional advice.

8. Did the trustees satisfy the Charities Act by not reading the approximately 600 objections to the sale in the form of letters, emails and petitions? The Summary DPR had a Barnet employee state that it was "a good thing" to sell, as the justification for the sale. Were the trustees made aware of the decisions being made on their behalf?

The Council authorised the Chief Operating Officer to deal with these matters.

9. The trustees have not approved the spending money for a "consultation". But 1.2 states, "Delegating the Trustee's powers to a committee is not permissible for Victoria Park Trust". Why did the Environment Committee approve this consultation when the trustees powers could not be delegated?

The report to Council as Trustee states: "The ring fenced capital receipt from the sale of The Lodge is £623,000. This money can only be spent on running costs of and improvements to the park. GWL were appointed to develop the Master Plan and to carry out specific youth engagement work, at a total cost of £35,858. This has been funded from a separate source, therefore the ring fenced capital receipt of £623,000 is to be spent on the park improvements including the procurement of each package and associated fees." The Environment Committee have not therefore taken a decision reserved to the Trustees.

10. One reason given on 4 Nov 2014 requiring The Lodge to be sold was that the Restrictive Covenant restricted its use to a dwelling for a park-keeper. A QC has proved this to not be the situation - he even concluded that the Restrictive Covenant was very unlikely to be enforceable, and that if it was, a clause had been inserted when The Lodge was sold, meaning only with a cash payment (meaning that it would not stop development if someone was able to enforce the covenant, they would only be entitled to a cash payment). HB Public Law gave inaccurate information. What compensation can be claimed from them?

There was a restrictive covenant on part of the Park, including the Lodge, not to build any building other than a cottage for the residence of a park keeper or gardener or tool and potting shed or bandstand and a cricket pavilion or other building to be used in connection with the use of the park as a recreation ground. The 2014 report did not say this was a reason for sale and did not comment on its enforceability. The QC found that the restrictive covenant was not enforceable. The 2014 report in the reasons for recommendations stated: "There is no longer a requirement for a park keeper to oversee the running of Victoria Park and within the rules of the trust the lodge can only be used for this purpose. Disposal of the lodge is sought in order that the lodge is removed from the restraints of the Trust and the proceeds of sale can be applied to improve Victoria Park." The 2014 report was referring to the constraints of the trust, not to restrictive covenants affecting the park. HB Public Law were not inaccurate and their advice does not contradict the QC's advice.

11. There were other options that The Lodge could have been used for. Why were these not presented as options?

Alternative options to disposal of the Lodge for sale on the open market were detailed in sections 3.1 and 3.2 of the report to Council as Trustee in November 2014.

12. Will the trustees accept that any money spent on the park now is a complete and reckless waste and new cafe/equipment will attract vandalism due to the coming policy of leaving this park open all night?

As it currently stands no decision has been taken on the proposals to cease parks locking, the Environment Committee requested more information before a decision would be taken. A report is due to go to the Environment Committee meeting in March on the proposals.

Julia Fidler

1. I am a Specialist Nurse Practitioner (Retired). Part of my job involved child safety and Public Health. Child Protection issues sometimes took 50% of my week by the time I retired.

I live near Victoria Park and have been concerned since the sale of the Lodge (which was strongly opposed by the community) that the first action would be to move the older children's playground. I now hear that this has been suggested.

My question is: How can LBB be even considering moving the older children's playground in Victoria Park?

It is perfectly placed for the **safety** of older children who use it as it is near and in sight of the main road Long Lane, which a lot of pedestrians use all day. It can also be seen from passing buses and the Bus stop. It is perfectly placed near two entrances to the park should there ever be an accident there or any 'trouble'. Parents allow children to play there knowing all this.

If we value children and their health we should be valuing this playground, enlarging it and encouraging young teenagers to play and exercise and feel safe.

I hope that LBB would not want to be seen to move the playground.

As part of the early engagement work that Groundwork London completed there was suggestions to either enhance the two sperate play areas or to relocate the southern play area (near Long Lane) to provide one large play area behind the Tennis Courts. These two options were put forward as part of the consultation and the preference from residents was to retain the two separate play areas in their existing locations and enhance both and this is what is proposed within the Master Plan.