

	<p>Council</p> <p>23 September 2014</p>
<p style="text-align: center;">Title</p>	<p>Avenue House, East End Road London N3: Delegation of decision making process and landlord's consent for alterations</p>
<p style="text-align: center;">Report of</p>	<p>Chief Operating Officer</p>
<p style="text-align: center;">Wards</p>	<p>Finchley Church End</p>
<p style="text-align: center;">Status</p>	<p>Public</p>
<p style="text-align: center;">Enclosures</p>	<ul style="list-style-type: none"> • Drawing number 22691/3 identifying the Property; • Appendix A - The 2015 scheme of Avenue House alterations and ground improvements • Appendix B - The Charity Commissioners Scheme of management of The Avenue House Estate (210345) charity.
<p style="text-align: center;">Officer Contact Details</p>	<p>Judith Ellis, Manager, Property Services judith.ellis@barnet.gov.uk</p> <p>George Church, Principal Valuer, Property Services. George.church@barnet.gov.uk</p>

<h2>Summary</h2>
<p>The London Borough of Barnet is the Corporate Trustee of the charity known as The Avenue House Estate (210345) ("TAHE") which is the registered proprietor of the freehold property known as Avenue House, East End Road, London, N3 (as shown on attached drawing number 22691/3) ("the Property"). The property is let to Avenue House Estate Trust (AHET) for a term of 125 years (a charity with similar objects) on full repairing and insuring terms.</p> <p>The proposed work is for refurbishment and alterations of the stable block to provide new catering facilities, together with a restaurant, and improvements to the planting of the extensive grounds. The expenditure will be for the benefit of the public as both AHET and the Council are required to ensure that Avenue House, its outbuildings and estate grounds are used by the public.</p>

These improvements will increase the estate income, which will strengthen the finances of this popular local facility.

The works are being funded by a Heritage Lottery Fund grant of approximately £2m together with the Council's grant of £250,000 (approved by Cabinet Resources Committee on 24 September 2013).

Before the refurbishment work can commence the Corporate Trustees of the charity (The Avenue House Estate) who are the freeholders and owners of the property have to give Landlord's consent in order that the work can commence. Legal advice is that the Full Council are the Corporate Trustees and this report seeks their consent to carry out the work.

Recommendations

- 1. That Council gives its consent as corporate trustee landlord in accordance with the 2001 Scheme and in accordance with the terms of the Lease to the tenant's application for landlord's consent to carry out works of capital improvements to the Property as set out in Appendix A and delegates authority to the Chief Operating Officer to negotiate and execute a licence for alterations in respect of the same.**
- 2. That Council note their responsibilities arising from The Charity Commissioners for England and Wales scheme which governs the charity called The Avenue House Estate (210345) dated 2 October 2001 (appendix B) and that it delegate its decision-making powers under this scheme and its responsibilities liabilities powers and duties under the Lease as corporate trustee landlord to the Policy and Resources Committee.**

1. WHY THIS REPORT IS NEEDED

2. The Property is let to Avenue House Estate Trust (AHET) for a term of 125 years on full repairing and insuring terms. AHET have the funding to carry out works but before they can commence the lease AHET to acquire landlord's consent.
3. The works are listed in appendix A and include refurbishment and alterations of the stable block to provide new catering facilities, together with a restaurant, and improvements to the planting of the extensive grounds.

This report also seeks that Full Council as Corporate Trustee consent to formally delegating its decision-making powers regarding the 2001 Scheme, including management of the property, to a suitable Committee and Full Council should be cognisant of the terms of the Scheme, which can be found in appendix B. This will allow for any future works or changes to the proposed works being considered by a Committee.

4. Legal advice is that the Policy and Resources committee is the legally correct committee to take future decisions. It could be considered that the Assets Regeneration and Growth committee (ARG) would be the preferred committee; however the Property is owned by the Trust and is not a Council Asset. It would therefore be legally incorrect for ARG to consider Avenue House matters as ARG's Terms of Reference cover asset management in relation to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

1. REASONS FOR RECOMMENDATIONS

- 1.1 The reason for the recommendation is that in accordance with charity and trust law, full Council is obliged to familiarise itself with their powers and duties as corporate trustee under the 2001 Scheme and, as landlord, under the Lease. It is sensible that, having done so, it considers the proposed works of capital improvements to the Property and gives formal consent to the tenant's application for landlord's consent to carry out the works comprising the capital improvements. The capital improvements will improve this popular and much loved local facility for residents.
- 2.2 The formal delegation of the responsibilities of Council arising under the 2001 Scheme to its Policy and Resources committee will enable the Council to more efficiently carry out its responsibilities for the ongoing management of the Property as corporate trustee landlord in accordance with the terms of the Lease. The Policy and Resources Committee will have the power to manage the Property, ensure compliance by the tenant of the tenant's obligations and covenants under the terms of the Lease and manage and deal with the landlord's obligations under the terms of the Lease within a reasonable time frame.

2. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 2.1 Given the recommendation that full Council delegates its powers to Policy and Resources committee, the ground improvement works could have been considered by that committee but given the legal requirement that the landlord deals with the tenant's application for landlord's consent to carry out works within a reasonable period of time and that the landlord's consent for this is granted as soon as possible in satisfaction of the Heritage Lottery Fund

requirements before they permit any drawdown of the funding to the tenant, this option is not recommended as it would take too long.

3. POST DECISION IMPLEMENTATION

- 3.1 Officers will be empowered to complete a licence for alterations for the capital improvements to be carried out, the subject of the tenant's application for landlord's consent to carry out alterations to the Property. Once the licence is completed, the tenant will be able to finalise the funding to be received from the Heritage Lottery Fund and the works can commence.

4. IMPLICATIONS OF DECISION

4.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2013-16 has a strategic objective to "promote responsible growth, development and success across the Borough"
- 5.1.2 To enable the Council via the tenant to continue complying with the objects set down in the Charity Commissioners' 2001 Scheme which includes preserving and maintaining the Property for use by members of the public including use for meetings, lectures and classes and other forms of recreation and leisure-time occupation with the object of improving the conditions of life for members of the public.
- 5.1.3 Under the terms of the Lease the Council as corporate trustee landlord is obliged to comply with the terms of the Lease throughout the lease term of 125 years. This includes considering applications made by the tenant from time to time within a reasonable period of time. By delegating the decision-making powers to an appropriate committee the Council will be more able to progress such applications within a reasonable period of time.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The resource implications of the ground improvements scheme were considered and approved by Cabinet Resources Committee in September 2013 in its capacity as local authority. The property implication is that consent is being given to a scheme of capital improvements which will enable the Property to be refurbished and by improving the facilities for visitors the Property will become more sustainable in the future. As a consequence of this, the Council as corporate trustee continues to comply with the objects of the charity, TAHE.
- 5.2.2 As the Property is held on a long lease on full repairing and insuring terms by a third party, there are no staffing or resources issues for the Council arising from the recommendations.

5.3 Legal and Constitutional References

- 5.3.1 Landlord's consent is required from the Council as Corporate Trustee, for refurbishment and alterations of the stable block to provide new catering

facilities, together with a restaurant, and improvements to the planting of the extensive grounds. The expenditure will be for the benefit of the public as both AHET and the Council are required to ensure that Avenue House, its outbuildings and estate grounds are used by the public.

- 5.3.2 The Council holds the Property on trust for TAHE under the Charity Commissioners for England and Wales Scheme dated 2 October 2001 (“the 2001 Scheme”). A copy of the 2001 Scheme is attached at Appendix A. The 2001 Scheme sets down the powers that the Council can exercise as corporate trustee under the Trust. These include the powers to grant a lease with a term of not more than 125 years and otherwise on terms agreed by the Commissioners. The Scheme enables the Full Council to delegate decision making to committees consisting of two or more members of the Trustee.
- 5.3.3 By a lease dated 22 October 2002 made between (1) the Council as trustee for TAHE and (2) Avenue House Estate Management (now known as Avenue House Estate Trust) (“AHET”) (“the Lease”) the Property was let for a term of 125 years to AHET (a charity with similar objects) on full repairing and insuring terms.
- 5.3.4 Full Council is required to meet as Corporate Trustee of the Property to consider its position and to appreciate what powers and duties it has in relation to this trust and how best to exercise them. Full Council is to be given a copy of the 2001 Scheme so that the members can familiarise themselves with their powers and obligations and be fully appraised of the objects under the 2001 scheme. A copy of the 2001 Scheme is attached at Appendix A of this report.
- 5.3.5 The Council meeting will examine two matters:
1. Council should understand its responsibilities in accordance with the 2001 Scheme and then agree to delegate its decision-making powers regarding the Property, the 2001 Scheme and the Lease to the Policy and Resources Committee for the residue of the term of the Lease.
 2. Council will recall the Cabinet Resources Committee decision of 24 September 2013 when an award was made by the Council to AHET (the tenant) for £250,000 towards a programme of capital improvements to the outbuildings and grounds of the Property for which a Heritage Lottery Fund grant in the region of £2m is also to be made, subject to formal consent being granted by the landlord to the proposed works. The Council as Corporate Trustee and landlord is required to consider the tenant’s application for landlord’s consent to carry out the works and, if it is satisfied with the proposals, give its formal consent to these improvements, details of which are set out in Appendix B.
- 5.3.6 Council should consider these two matters now, given the tenant’s application for the corporate trustee landlord’s consent.,. The Council, as landlord, is obliged under the terms of the lease to consider the tenant’s application for such consent within a reasonable period of time.

If full Council decides to delegate its decision making powers it will enable the Policy and Resources Committee or such other similar committee to take future decisions concerning the day to day management of the property and the tenant via the Lease provisions.

- 5.3.8 To enable Council to note their responsibilities arising from The Charity Commissioners for England and Wales scheme which governs the charity called The Avenue House Estate (210345) dated 2 October 2001 and to consider the alterations proposed and contained in the Appendices, the committee paper has been circulated to members of the committee at least five working days in advance of the Council meeting.

5.4 Risk Management

- 5.4.1 There is a risk that unless the Council is able to give its formal consent to the tenant's application to carry out works relating to the capital improvements to the Property, the Heritage Lottery fund will not release its grant money and the funding may be lost. This risk is being addressed by consent for the works being sought in good time by the tenant.

- 5.4.2 The Council as corporate trustee landlord is required to consider the tenant's application in a reasonable time. If it fails to do so, it could be held liable to the tenant for damages.

5.5 Equalities and Diversity

- 5.5.1 Under the Equality Act 2010, the Council must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.

- 5.5.2 The proposal does not raise any issues under the Council's Equalities Policy and does not have a bearing on the Council's ability to demonstrate that it has paid due regard to equalities as required by the legislation. No immediate or later equality impacts are anticipated as a result of this proposal.

5.6 Consultation and Engagement

- 5.6.1 Ward Councillors have been consulted. Public consultation has been conducted concerning the grounds improvements scheme and the proposals were well received.

7. BACKGROUND PAPERS

- 7.1 Cabinet Resources Committee 24 September 2013. Agenda item 7, pages 57, Avenue House Estate Trust - Grant