

	<p style="text-align: center;"><b>Council</b></p> <p style="text-align: center;"><b>4<sup>th</sup> November 2014</b></p>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Proposed disposal of former Park Keepers Lodge, Victoria Park, Long Lane, Finchley, N3</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Chief Operating Officer</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>West Finchley</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>Site Plan 24158</p>
<p style="text-align: right;"><b>Officer Contact Details</b></p>	<p>James Goodchild Phone: 020 8359 2937 Email : james.goodchild@barnet.gov.uk</p>

## Summary

Victoria Park Lodge is a two-bedroom detached former park keeper's lodge located on the periphery of Victoria Park.

The Lodge is a Trust property and was previously used as a park keeper's cottage in accordance with the requirements of the Trust. The Trust limits the use of the building to this purpose and as there is no requirement for a park keeper's lodge. Disposal of the building was sought from Cabinet Resources Committee (CRC) in 2009.

Following CRC approval to dispose of the property there has been significant correspondence with the Council's lawyers and Charity Commission in order to ensure that any disposal accords with the requirements of the Trust.

A significant amount of money, estimated at £100,000, is needed to bring the lodge up to decent homes standards that would allow it to be used as residential accommodation; however, use for residential accommodation other than that of a park keeper is not consistent with the requirements of the Trust. If the Full Council agrees to the sale of the property in accordance with the Charity rules, the property will then be removed from the

Trust.

The decision to dispose will need to be taken by Full Council as advice obtained from the Council's solicitors is that the decision to dispose of Victoria Park Lodge can only be taken by the Full Council, acting collectively as Trustee.

## **Recommendations**

**That Council as Trustee of the Victoria Park Trust :-**

- 1. Agrees that the Lodge is no longer required for the purposes of the Trust.**
- 2. Agrees that the interests of the Trust would be better served by investing the proceeds of sale in the continuing maintenance and improvement of Victoria Park.**
- 3. Authorises the marketing of the Lodge for disposal in the manner that will secure the best price as advised by the independent surveyor required to be appointed under charity law.**
- 4. Authorises the Chief Operating Officer to take all steps necessary to secure the sale of the freehold or long leasehold interest in the Lodge in accordance with the Charity Commission's requirements and the recommendations of the appointed surveyor, to negotiate terms with prospective purchasers and to approve the final terms of any sale contract and transfer deed.**
- 5. Authorises the Chief Operating Officer to appoint the necessary professionals to conduct the sale, in accordance with charity law, the fees of such professionals to be discharged from the sale proceeds.**
- 6. Notes that the proceeds of sale of the Lodge must be held in a ring-fenced fund to defray future running costs relating to Victoria Park and carry out improvements.**

### **1.0 WHY THIS REPORT IS NEEDED**

- 1.1** Victoria Park Recreation Ground, including the Lodge, was gifted to the Council in February 1900, following donations received by public subscription to create a park commemorating the diamond jubilee of Her Majesty Queen Victoria. The conveyance creating the Trust recites that the land is to be held "on trust as a public ground ... for the purposes of the Recreation Grounds Act 1859". As this is a Charitable Trust administered by the Council, a decision by the council as Trustee is required in order to dispose of the park keeper's lodge.
- 1.2** Victoria Park Lodge is a two-bedroom detached former park-keeper's lodge located on the periphery of Victoria Park.

- 1.3 In accordance with the Trust the Lodge was used as a park keeper's cottage and subsequently was used as temporary hostel accommodation pending a decision on its future. Following Cabinet Resources Committee on 2nd November 2009 where consent to dispose was approved, there has been significant correspondence with the Council's lawyers and the Charity Commission in order to ensure that any disposal accords with the requirements of the Trust and of charity law, which requires all proceeds to be used for the benefit of the park and the local populace.
- 1.4 The building needs an estimated £100,000 expenditure to bring it to decent homes standard which would be required to be able to use it as housing. However, housing accommodation, other than that of a park keeper, is not permitted within the requirements of the Trust and the lodge should not have been used as temporary accommodation in the past.
- 1.5 The maintenance and management budget for the Park is currently provided by the Council, and any funds from the sale of the Lodge will be ring-fenced to maintain and improve the Park, particularly addressing works that have been on hold due to the funding gap.
- 1.6 Works that could be carried out are:
- Improvements to the play areas in terms of both the variety and quantum of equipment available. It is hoped that this could pay for replacement and additional play equipment in the children's play area.
  - Refurbishment of the tennis courts, two of which are currently closed as they are unsafe and require a complete re-build. The remaining four require a new top coat of acrylic sports surface and new lines.
- 1.7 The extent of the works and details of their implementation will be known once the disposal figure has been secured. Approval to carry out the work will be sought from the Trustee at this time.
- 1.8 Delegating the Trustee's powers to a committee is not permissible for Victoria Park Trust. The power to delegate has to be expressly set out in the instrument creating the trust. A Charity Commission Scheme was not used and therefore there is no document which allows the Trust to delegate its powers to a committee of the Council.

## **2.0 REASONS FOR RECOMMENDATIONS**

- 2.1 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.
- 2.2 The capital receipt from the sale of the lodge will be ring-fenced and the Trust will be able to use the money to maintain and improve the Park.
- 2.3 The Full Council who are the Trustees are able to make the decision to sell the property and this report seeks approval to dispose of the lodge in accordance with the recommendations.

## **3.0 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 To use the Lodge as temporary general needs housing. However, investigations found that this was not allowed within the objects of the Trust.
- 3.2 Barnet Homes reviewed the possibility of them acquiring the property, which, in keeping with the requirements of the Trust, would have to be at market value. There would also have to be a process to demonstrate best consideration. However after review Barnet Homes reported that an investment at market value plus the cost to refurbish would not make this a viable proposition. In addition and more importantly, the location of the property is not suitable for the provision of affordable or indeed temporary accommodation which would lead to increased management costs.

## **4.0 POST DECISION IMPLEMENTATION**

- 4.1 An independent surveyor will be appointed, in liaison with the Charity Commission, to advise on the value, marketing strategy and appropriate basis of disposal for the property.
- 4.2 The proceeds from the sale of the Lodge will be reinvested by the Full Council, as Trustee of Victoria Park, in accordance with the objects of the charitable trust, namely the preservation and upkeep of Victoria Park as a public recreation ground.

## **5.0 IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 The Council should make its decision based on the best interests of the Trust alone, disregarding factors that are irrelevant to the Trust. The Council's own interests are therefore not a material consideration.

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

- 5.2.1 The property is held under a charitable trust and does not form part of the Council's corporate estate. The Lodge would require approximately £100,000 to make the property habitable to decent homes standards, which the Trust does not have.
- 5.2.2 Any capital receipt obtained from the disposal of the Lodge will be used solely for the funding of infrastructure improvements to Victoria Park.
- 5.2.3 The Council presently funds all the maintenance to the Park.

## **5.3 Legal and Constitutional References**

- 5.3.1 Victoria Park Recreation Ground, including the Lodge, was transferred to the Council in February 1900, to be held on trust as a public ground for the purposes of the Recreation Grounds Act 1859 and is held on charitable trust. The Recreation Grounds Act 1859 required such land to be held as "open public grounds for the resort and recreation of adults, and as playgrounds for children and youth, or either of such purposes". The Recreation Grounds Act 1859 was repealed by the Charities Act 1960, which was repealed by the Charities Act 2006. The Charities Act 2011 consolidated the majority of the Charities Act 2006.
- 5.3.2 The Council is the sole corporate trustee of this land. It is clear from the 2<sup>nd</sup> November 2009 Cabinet Resources Committee minutes that the Committee, at that time, were unaware that the Lodge was a Trust asset. The Committee resolved to sell the Lodge on the basis it was a Council asset which is inaccurate. As this land is held on trust by the Council as corporate trustee, whatever decisions the Council makes it must do so as the corporate trustee, rather than in its usual capacity as beneficial owner. In brief, this means that decisions taken must be in the best interests of the Trust and in accordance with the objects of the Trust.
- 5.3.3 Charity Commission's "best practice" advice is to keep the management of the charity separate, as far as possible, from the business of the local authority. Moreover, the finances of the Trust must be kept separate from those of the Council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The local authority may top up the finances of the Trust but **no funds may pass from the trust into the Council's own accounts.**
- 5.3.4 As the whole of Victoria Park Recreation Ground is designated land of the charity - meaning that the whole or most of the land cannot be disposed of and not replaced without effectively preventing the fulfilment of the charity's objects - the sale of Victoria Park Lodge must be advertised in accordance with section 121 of the Charities Act 2011. The Trustee also needs the authority of the Charity Commission to dispose of designated land. Previous correspondence with the Charity Commission has stated that their formal consent is not required, owing to the very small area of the Lodge by

comparison with the total area of the Park. It is not necessary therefore to make any further application to the Commission prior to the Lodge being marketed for disposal.

- 5.3.5 The notice period must be for at least a month and all representations have to be considered. Notices will be posted on the property and in the local newspaper. This requirement is separate to the requirement for advertising for the purposes of obtaining the best price, which is discussed below at para. 5.3.7.
- 5.3.6 The public open space requirements do not need to be followed in addition, notwithstanding that this land is held for the purposes of public recreation, as the Trustee will not be disposing of it pursuant to section 123 of the Local Government Act 1972. The power on which the Trustee is relying when it disposes of the land is in fact the power of sale found in section 6 of the Trusts of Land and Appointment of Trustees Act 1996.
- 5.3.7 Under s. 117 - 120 of the Charities Act 2011 the Trustee must comply with the following procedures:
- a) it must obtain a written report from a qualified surveyor independent from the council - see below;
  - b) it must advertise the disposal (unless the surveyor recommends not to);
  - c) the Trustee must decide that it is satisfied that the terms for the disposal are the best that can reasonably be obtained.
- 5.3.8 In addition, certain statements and certificates have to be made in the agreement for sale and the transfer deed confirming compliance with the above statutory procedures.
- 5.3.9 The qualified surveyor chosen by the Trustee must be a person who:
- a) is professionally qualified; for example, a Member or Fellow of the Royal Institution of Chartered Surveyors (RICS); and
  - b) the Trustee reasonably believes to have the ability in, and experience of, valuing land of the particular kind and in the particular area in question.
- 5.3.10 The contents of the report to be provided by the surveyor must conform to certain regulations - the Charities (Qualified Surveyors' Reports) Regulations 1992 - which the surveyor if he or she has experience of acting for charities, should be familiar with.

## **6.0 Risk Management**

- 6.1 Due to its relatively isolated location, the property is vulnerable to squatting, vandalism and fly-tipping. The property has been boarded up with perforated metal security screens, and regular inspections have been undertaken to

ensure this risk is minimised.

- 6.2 Failure to dispose of the freehold or grant a long lease would result in the building remaining empty for the foreseeable future leading to further deterioration of the property, as there are currently no funds available within the Trust to maintain it, and alternative uses are required to be consistent with the objects of the Trust.

## **7.0 Equalities and Diversity**

- 7.1 The Council is committed to improving the quality of life and wider participation for all in the economic, educational, cultural, social and community life of the Borough.
- 7.2 It is considered that the proposal will not give rise to any issues under the Council's Equalities Policy and will not compromise the Council in meeting its statutory equalities duties.

## **8.0 Consultation and Engagement**

- 8.1 The following relevant West Finchley Ward Councillors have been notified:
- Cllr Ross Houston,
  - Cllr Jim Tierney, and
  - Cllr Kath McGuirk.

## **9.0 BACKGROUND PAPERS**

- 9.1 Cabinet Resources Committee, 2 November 2009 (Decision item 12) – resolved that Victoria Park Lodge be declared surplus to the Council's requirements; that the occupiers be decanted into suitable alternative accommodation; that the Council's freehold interest in the property be offered for sale by non-binding tender on the open market; and that the sale be completed to the highest bidder; subject to the price exceeding £370,000.