

TRUSTEE BOARD OF GILSTRAP AND WILLIAM EDWARD KNIGHT CHARITIES
2 OCTOBER 2020

LAND OFF CEDAR AVENUE/LINCOLN ROAD, NEWARK - UPDATE

1.0 Purpose of Report

1.1 To consider the future options for the land owned by the Trust at Cedar Avenue, Newark.

2.0 Background

2.1 The Gilstrap Charity owns land at Chestnut Avenue/Cedar Avenue, which is shown on the attached plan, marked as **Appendix A**. The site is included within the Council's Allocations DPP for residential development to provide 24 dwellings with on-site public open space of 0.3 hectares and the retention or relocation on-site of the multi-use games area (MUGA).

2.2 The land does not currently generate any income for the Charity and for many years it has been used as non-designated public open space. There is a MUGA on the site, which was provided and paid for by the District Council.

2.3 Although there is no formal agreement between the Council and the Charity, the Council has effectively met all maintenance costs for the land in lieu of a payment to the Charity of a licence fee in recognition of it allowing the MUGA to be sited on the land and it being used as open space.

2.4 In July 2017, following two incidents of unauthorised encampments by travellers that resulted in significant costs to: secure their removal; clean up the site; and replace a security gate that had been damaged - the Trustee Board considered the future of the land. The Board concluded, at the time, that it was not in the interests of the Charity to retain the land given that the land had development value, the Charity was not receiving an income from the use of the land, and that it was facing recurring costs.

2.5 The land was advertised for sale and informal tenders were sought for offers to purchase it. Following independent external surveyor's advice, the most favourable offer received was accepted, subject to contract. The most favourable offer received was from Nottingham Community Housing Association (NCHA) in the sum of £610,000.

3.0 Update on Sale

3.1 The offer made by NCHA was subject to the grant of "*an implementable planning consent, defined as a scheme of 32 affordable housing units*". However, in October 2019, following difficulties experienced during the planning application process it was reported to the Board that NCHA had revised their original offer for the land.

3.2 NCHA had concluded that to achieve planning policy compliance and thereby secure planning consent they would need to reduce proposed unit numbers for the site to 24. This, coupled with the significant abnormal cost from the on-site re-provision of the MUGA and the MUGA adoption commuted sum, resulted in the NCHA making a revised offer for the land of £300k.

- 3.3 The Board agreed to seek advice from the Charity's independent surveyor on the revised offer from NCHA and on other possible options open to the Charity concerning the desirability or otherwise of the proposed disposition of the land. This was in the context of the Charity's obligations to consider the best interests of the Charity and comply with charity law that any disposition must be the best that can reasonably be obtained for the Charity.
- 3.4 Wood Moore & Co, the Charity's independent surveyor has since confirmed that NCHA have withdrawn from the purchase of the land.

4.0 Alternative Options for the Land

4.1 Now that the proposed sale of the land to NCHA has fallen through it is timely for the Board to consider the various options for the land afresh. There are a range of options available, and these are set out below:

4.1.1 **Re-advertise the land for disposal on the open market** – The land remains an allocated site of some significant value, and the Council's duty as Trustee is to act in the best interests of the Charity. This duty would preclude the Charity from taking deliberate action to de-value the site – such as applying to the Council as the Local Planning Authority for it to be de-allocated. If the Board wished to pursue the option of disposal for development, then in order to comply with Charity law requirements, a report covering the various matters listed in the Charities (Qualified Surveyors' Reports) Regulations 1992 would need to be obtained from the charity's surveyor. The report would include an opinion as to whether it is in the Charity's interests to dispose of the land at this point in time, and whether the land should be disposed of with its current planning status or whether the Charity should seek detailed consent before offering it for sale.

4.1.2 **Retain the land as Charity property with its use as amenity field and public open space** – This is effectively retaining the 'status quo' position. This option means that the charity would derive no income from the use of the land and would have the liability of ongoing maintenance (albeit that the cost of this is currently met by the District Council – as detailed in paragraph 2.3 above). However, it should be noted that the use of the land as amenity field and open space does fit with the objects of the Charity. The object of the charity is expressed as follows:

"The object of the charity is the general benefit of the inhabitants of the area of benefit in such charitable ways for the public benefit as the trustee thinks fit."

The use of the land as open space and playing field does come within the definition of 'general benefit' of the inhabitants. The area of benefit of the charity is the area of the parish of Newark. If the Board considers this to be the most appropriate use for the land this option is feasible.

4.1.3 **Dispose of the land to a public body or other organisation to retain as an amenity field and public open space** – This option could involve the freehold transfer or lease to another organisation or body to be used as a public open space (POS), assuming that there was interest in doing this from another organisation or body. If the land were to be sold or leased for amenity use then the Charity could effectively be foregoing a substantial capital receipt since the value of amenity land is substantially lower than the value of a

developable site. If this option were to be pursued there would need to be covenants applied to ensure that it was retained for use as POS in perpetuity, and not used for any other purpose (i.e. developed), and approval from the Charity Commission might need to be obtained. Appropriate legal provisions to allow for a deferred capital receipt to the Charity should development occur at some stage in the future would also be prudent. An alternative approach could be a leasehold disposal, which would have the benefit of providing the charity with an annual rental income. If this option were favoured, then it would need to be explored further.

Another approach could be that there is no actual disposal and that the site be managed by NSDC/another body on a formal basis as a recreational facility. If this were preferred, then some consideration should be given by the Trustee Board as to whether the Charity should derive an income from such an arrangement to compensate for the opportunity cost of not having had a capital receipt that could be put to use in pursuance of its charitable aims. If this approach were preferred, then the Board would require independent valuation advice as to what an appropriate income would be. The Council's relevant committees would then need to consider whether the Council wished to take on the management formally and at the cost proposed by the Board.

- 4.2 The charity's independent surveyor has been asked to provide advice on the different options above and give an opinion on the implications on value. The advice received from Wood Moore & Co is attached as an exempt **Appendix B** to this report. If the Board wished to explore further, as a preferred option, any of those listed in paragraphs 4.1.1 and 4.1.3, the surveyor would need to give a red book valuation to comply with charity law requirements before any proposal is finalised.

Alternate Proposal

- 4.3 An alternate proposal has been received for the development of the site into a 'Children's Wood and Wildlife Meadow'. This proposal was submitted by the Winthorpe Estate Residents Group (just prior to the Pandemic) – although it should be noted that the named individuals who constitute the group are unknown and they have declined to identify themselves when requested to do so previously. A copy of their proposal is attached to this report as **Appendix C**.
- 4.4 If the Board wishes to consider this proposal further, then it is suggested that more investigation, time and thought would need to be given to ascertain accurate costings. Whilst the proposal indicates that the facilities could be achieved with 'minimal financial support' it does not contain any detail about how this would be funded. The proposal includes 'accessible' play equipment, which is expensive and would have ongoing maintenance requirements. Such schemes (accessible or mainstream/traditional) are likely to cost in the region of tens' of thousands of pounds and a proposal would be required in order to provide a suitable cost plan. In addition, the proposal includes an ambitious planting scheme and solar lighting for columns to illuminate the footpath – all of which would need properly costing. In terms of delivering the scheme, there are undoubtedly elements that the community could support, such as some planting, but the main infrastructure would need to be delivered by specialist contractors – particularly the accessible play equipment.

4.5 There are also two other aspects of the proposal that would require careful thought by the Board, given its obligations as Trustee. These relate to the suggestion that the Charity protect the land through a Deed of Dedication with Fields in Trust, which would effectively preserve the land as amenity land in perpetuity, and to create a public right of way over the land. Both of these matters would need to be considered by the Trustee Board as to whether they would be in the best interests of the Charity.

5.0 Financial Comments

5.1 As per section 4.1 there are potentially three options for the piece of land, the continued sale of the development site will gain a significant capital receipt. The second and third options will require further negotiations and agreements before the financial information can be fully identified and reported.

6.0 RECOMMENDATION

That the Board consider the options detailed in the report for the future use, retention or disposal of the of the land off Cedar Avenue/Lincoln Road, Newark.

Reason for Recommendation

To consider the best option for the future of the land at Cedar Avenue/Lincoln Road for the interests of the Gilstrap charity.

Background Papers

None

For further information please contact Karen White on Extension 5240.

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