

**Meeting of the Ernest Stevens Trust Management Committee –
31st January 2024**

Report of the Director of Regeneration and Enterprise

Wollescote Park – 5G Mast Application

Purpose of report

1. To inform the Management Trust Committee, in respect of the draft Heads of Terms as agreed with Cornerstone.

To authorise the officers of the Council to proceed with the necessary actions to grant the initial licence for the ground investigations to take place and subsequently the lease for the mast and equipment.

Recommendations

2. It is recommended:-
 - The Ernest Stevens Trust Management Committee note the content of the report.
 - Authorise the council officers to proceed to enable the proposed mast development and the lease completion.

Background

3. The Wollescote Park was gifted to the Urban District Council of Lye and Wollescote on 29th September 1930 for the purpose of a public pleasure ground and/or refreshment rooms, free public reading rooms, free library, museum, picture gallery, public offices, maternity home, convalescent home or a hospital, child's welfare centre or any other purpose which have for its object the benefit advancement and welfare of the people of Lye and Wollescote District and welfare of the public generally so long as the performance of such benefit will not be a breach of any of the conditions contained in the Deed of Gift.

4. The Charities Act 2011 states that:-
Section 117 no land is to be conveyed, transferred or leases or otherwise disposed of without an order of the Court or Commission and:-
Section 119 that the charity trustees must before entering into any agreement for agreement to dispose must obtain a written report on the proposed disposition from a qualified surveyor acting exclusively for the charity, advertise the proposed disposition, decide that they are satisfied having considered the surveyor's report that the terms on which the disposition proposed to be made, are the best that can be obtained for the Charity.
Section 120 where the granting of a lease of less than 7 years, (1) the Trustees should obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the Trustees to have the ability and practical experience to provide to them with competent advice on the proposed disposition. (2) decide that they are satisfied, having considered the person's advice that they are the best that can be reasonably obtained for the Charity. Legal Services on behalf of the Trust would need to apply to the Charity Commission for a scheme to permit the grant of the lease.
There are changes pending in respect of the legislation that may reduce the requirements in respect of the qualified surveyor and advertisement process.
5. The Trust has evidence of the fact that it has undertaken the legislation process and has received Schemes from the Charity Commission in respect of dispositions in respect of the various Deeds of Gift but the Trustees should consider the guidance received from the Charity Commission that are attached to this report before making a decision.
6. The Electronic Communications Code (the Code) provides an Operator with rights to install electronic communication apparatus on, under or over the land for statutory purposes and the Courts have the power to impose the rights of the Operators. Under Part 12 there may be provisions for rights to object to certain apparatus being installed. Independent legal advice was taken around the implications of the Code upon the provisions of the Deed of Gift and the Charities Act which found that if a lease was imposed on the council through the workings of the code it would override the prohibitions in the deed of Gift and the Charities Act 2011. While the Council may seek to defend the position of the Trust against the Code this would be a costly course of action with a very uncertain outcome given the wide-ranging powers granted to the mast operators under the Code.
7. Cornerstone acting on behalf of the network operator has sought and obtained planning permission for the erection of an aerial mast to deliver

5g services – planning reference P22/0452/PN16A land at Wollescote Cricket Pitch Stourbridge DY9 7JU. Per the plans appended.

8. Cornerstone need consent to enter the site undertake a ground survey ahead of erecting the mast.
9. Terms including rent for the mast and associated infrastructure being on site are aligned with the telecommunication code.
10. In accordance with the guidance from this committee negotiations have taken place with Cornerstone and terms agreed for a 6-year term at £1000 per annum rent. The operator requires to undertake ground investigation, being two trial holes one in the mast location and the other where the ground equipment will be located. Such ground investigation would be under a standard licence agreement. Members need to be aware the company has identified a requirement to lop one tree only pruning it from a height of 18 m to 14.2 m. This is the fir tree closest to the road. Details of the proposed location and height are appended to this report.

Finance

11. The proposed income to be received by the Ernest Stevens Trust Committee is £1000pa plus a contribution towards costs.

Law

12. The Deed of Gift dated 29th September 1930 made between Ernest Stevens Esq and The Urban District Council of Lye and Wollescote contains a number of conditions that are referred to above in this report, of which should be considered. The Electronic Communications Code applied to this report. Sections 2 to 4, and Section 105, 117-123 of the Charities Act 2011 gives power to authorise dealings with charity property.

Risk Management

13. There are no material risks presented by this project. The installation risk assessment will be shared with the health and safety team and Green Care will monitor site works to ensure the risk assessment is being followed for safe working.

The equipment will be independently inspected before being opened to the public.

Equality Impact

14. The proposals contained in this report are consistent with the Council's Equality and Diversity Policy.

15. There is no effect of the decision on children and young people.

Human Resources/Organisational Development

16. There are no HR/OD implications arising from this report.

Commercial/Procurement

17. None applicable to this report.


Environment/Climate Change

18. There is no impact on the environment.

Council Priorities and Projects

19. This proposal has a direct link into the Dudley Council Plan 2022-2025, specifically: **Dudley the Borough of Ambition and Enterprise.**

20. The proposal supports wider Council and Borough activity and projects including Digital and Information Technology (including Data Protection) and a positive impact on our customer base



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Appendices - Appendix 1 site development plans

List of Background Documents