

Ernest Stevens Trust Management Committee – 23rd October 2023

Joint Report of the Acting Service Director Neighbourhood Delivery and Head of Waste and Transport Operations

Lease for Tintern House, Stevens Park, Quarry Bank with the Emily Jordan Foundation Projects (EJFP)

Purpose

1. To inform the Management Committee of the current situation with regard to the Lease and the Financial position of the Emily Jordan Foundation Projects (EJFP) at Stevens Park, Quarry Bank as requested by the Chair for consideration by the Committee.

Recommendations

2. It is recommended that:-
 - The Ernest Stevens Trust Management Committee note the content of the report and inform Officers how they wish to proceed.
 - The Ernest Stevens Trust Management Committee note the previous proposal by the Chair that a deadline for the completion of the lease be agreed.

Background

3. This property is owned in trust by the Council (not as landowner) and is managed by the Ernest Stevens Trust Committee (the Committee). The Trust is registered with the Charity Commission. The Charity Commission have issued an Order permitting the Council (Trust) to grant a 10-year lease but this Order expired on

29th July 2022. Legal Services have informed the officers in the Environment and the Committee of this.

The Council obtained funding for £1,395,500 approximately from the National Heritage Lottery Fund (HLF) and entered into a partnership agreement with the Emily Jordan Foundation on 30th August 2018 to January 2024. The parties in the partnership agreement agree to maintain accurate records and accounts for the duration of this agreement and the 10 years beyond the end of the programme for audit purposes.

4. **The Lease**

Regarding the Lease to Tintern House, Heads of Terms were provided to Legal Services on 30th July 2018 by Corporate Landlord. On 25th October 2018, the Charity Commission agreed an Order to permit the grant of a lease but required a draft copy lease before submitting the final Order. On the 1st November 2018, a draft lease was sent to the Emily Jordan Foundation and Charity Commission.

5. Since March 2019, protracted communications, discussions and negotiations have taken place, including interventions by the HLF. Details of the stages in the progress of the lease (as documented by Legal Services) are provided in Appendix 1.
6. It has been agreed that upon the signing of a 10-year lease, Legal Services are to write to the Charity Commission requesting a 20-year lease but excluded from the protection of the L&T Act.
7. On 14th July 2023 the Environmental Directorate advised that the Emily Jordan Foundation Projects had recently confirmed that they were facing financial difficulties having started three new charity projects at Tintern House during the covid pandemic. They are currently unwilling to proceed further with the lease and incur more legal costs until they are given confirmation on the availability of further funds from the lottery project.
8. The HLF was consulted and agreed the following course of action:

1. EJFP set out their financial position so that their request for further funding can be properly analysed.
 2. The Final Account for the capital works should be agreed.
 3. A financial review of the project is undertaken & any further spending from the capital account be finalised.
 4. Any proposal to make a further contribution to EJFP is considered and approved by the Lottery and Council.
9. The Final Account for the capital works has been agreed and a review of the project undertaken (Items 8.2 & 8.3) above.

With respect to items 8.1 and 8.4 above, these are explained as follows in item 11. Finance.

10. In addition to the issue of financial support to EJFP there are issues about the Energy Performance Certificate, Utilities & the Insurance policy. Further discussions are taking place & a verbal update will be provided for the Committee Meeting.

Finance

11. With regard to the financial position of EJFP (item 8.1) EJFP have been asked to submit their audited accounts and as charity accounts are different to commercial accounts, they have submitted Unaudited Accounts, Examined Independently and signed by their Chartered Accountants.

Several meetings have been held between Officers to discuss correspondence and discussions with EJFP. A meeting is arranged with EJFP and their accountants on Wednesday 18th October 2023 followed by a meeting with the Lottery on Friday 20th October. An updated report will be made available prior to the Committee Meeting on the 23rd October.

12. Project Board & Process

With regard to item 8.4: (Any proposal to make a further contribution to EJFP is considered and approved by the Lottery and Council),



Legal Services have recommended that the Project Board that was responsible for the Partnership Agreement with EJFP be reconvened.

The following process is being undertaken:

- A Finance meeting is arranged with EJFP for 18th October 2023
- A meeting is arranged with the Lottery for Friday 20th October '23.
- An updated report will be issued prior to the Trust Committee Meeting on Monday 23rd October 2023
- The Project Board consider all reports and submissions and in respect of the Lottery funding, confirms the Councils' recommendations to the next meeting of the Trust on the 31st January 2024.

Outcomes

13. Legal Services have recommended that the Environment Directorate supply written details of the audited evidence of outcomes achieved by the Emily Jordan Foundation.

The attachment Appendix 2 describes in detail the agreed outcomes: Appendix 2: The Emily Jordan Foundation Projects Lease Terms & Challenge & Outcomes - Final Draft 12/8/2022.

Since early 2019 when the delivery stage of the project commenced, EJFP in partnership with the Council have been submitting quarterly reports to the Lottery. These reports describe in detail their progress and the delivery of the outcomes. To date the number of EJFP volunteer hours which are used to calculate the assessed rental value has been 3,185 for the period of 2 years when 2,112 were

required to cover the value of the rent. They have therefore exceeded the target for 2 years by over 50%.

We will be pleased to provide regular updates to the Trust Committee as requested.

Law

14. **Section 139 of the Local Government Act 1972 empowers the Council to accept and administer gifts of property which it enables the Council to discharge any of its functions and where the gifts are for the purposes of benefitting the inhabitants of the area. The Ernest Stevens Trust Committee has delegated powers to deal with the management of all land and properties within the Borough that are held under trust. The key legislation being the Charities Act 1960, 1992, 1003, 2011 and the Trustee Investment Act 1961.**

If EJFP do not provide the financial information and evidence as to what benefits have been delivered to the Community by EJFP then the Project Board responsible for the Partnership Agreement with EJFP have the ability to agree that the Council may serve Notice to Terminate the Partnership. If this action is taken then Legal Services recommend that the Corporate Trust (the Council) serve Notice to Terminate the lease on EJFP and Jonathan Smith (being the tenant of the Café) at the same time. The Corporate Trust has a responsibility to ensure that the beneficiaries (public) are receiving best consideration in respect of this property. It is very important in view of the circumstances that the Project Board is reconvened in respect of the funding for this property.

Risk Management

15. The following risks are inherent with this project:
- The charity may cease trading and the Council may have to find an alternative charity partner and/or café operator.



We are currently discussing issues together with EJFP and the Lottery to hopefully minimise, mitigate and ultimately avoid the realisation of the above risk.

Equality Impact

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

Human Resources/Organisational Development

17. Not applicable to this report

Commercial/Procurement

18. Not applicable to this report.

Environment/Climate Change

19. The proposals in this report do not have any direct impact on the environment or climate change.

Council Priorities & Projects

20. The working partnership with EJFP accords with the Council vision and plan for Dudley to be 'The Borough of Opportunity' where "Those with special educational needs and disabilities achieve the best possible outcomes"



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List of Background Papers

None

Appendices

- 1: Stages in the progress of the lease (as documented by Legal Services).
2. THse Schedule 1 Challenges & Outcomes 26.10.22

Appendix 1:

Stages in the progress of the lease (as documented by Legal Services):

Heads of Terms were provided to Legal Services on 30th July 2018 by Corporate Landlord.

25th October 2018 Charity Commission agreed an Order to permit the grant of a lease but required a draft copy lease before submitted the final Order.

1st November 2018 draft lease sent to Emily Jordan Foundation and Charity Commission.

5th March 2019 Order is received from Charity Commission. This states that the lease is to be for 10 years, excluded from Landlord & Tenant Act protection and also states name of the tenant.

8th March 2019 Emily Jordan Foundation saying lease is being considered but not instructing solicitors at this stage.

19th March 2019 Emily Jordan query lease despite heads of terms being agreed. The points raised are considered at length.

27th April 2020 Emily Jordan advise that new company has been approved at the Charity Commission and has achieved charitable status. Legal Services need to write to the Charity Commission of this change.

19th March 2021 new Heads of Terms received by Legal Services

25th May 2021 new draft lease sent out to officers. Emily Jordan still continue to query terms of the lease.

27th July 2021 Charity Commission confirm change of name of tenant saying lease needs to be completed by one year of 29th July 2021.

22nd September 2021 Emily Jordan Foundation still not instructed solicitors but continues to raise points on the lease.

13th August 2021 Legal Services aware that the Council has permitted Emily Jordan Foundation and Jonathon Smith into occupation in August 2021.

27th October 2021 Opening Day with Mayor of Dudley (Cllr Anne Millward) present.

13th October 2021 Jonathon Smith in occupation of café requesting a lease. Legal Services explain that his lease should come from the Emily Jordan Foundation.

22nd June 2022 Emily Jordan Foundation instruct Solicitors and send draft lease with amendments to Legal Services. Legal Services respond but Emily Jordan then say “not completing the lease until 20 year term agreed including protection of the L&T Act”

Officers reviewed Emily Jordan Foundation requirements for the lease against the partnership agreement wording, the agreement with HLF, including discussions direct with HLF and the scheme agreed with the Charity Commission to advise the Committee of the appropriate course of actions.

30th January 2023 - Decision of the Committee saying that various points in the lease can be agreed but that completion of the lease needs to be completed for a 10 year period and then following legal completion Legal Services to write to the Charity Commission requesting a 20 year lease but excluded from the protection of the L&T Act.

On 23rd April 2023 email received from solicitors confirming no instructions to work on the lease.

On 14th July 2023 Environmental Directorate advised that Emily Jordan Foundation have also recently confirmed that they are facing financial difficulties having started three new charity projects at Tintern House during



the covid pandemic. They are currently unwilling to proceed further with the lease and incur more legal costs until they are given confirmation on the availability of further funds from the lottery project.

On 27th July 2023 the Environment Directorate gave a verbal report to the Ernest Stevens Committee. The Committee have recommended that a full written report be presented at the October committee meeting.

Appendix 2:

The Emily Jordan Foundation Projects Lease Terms & Challenge & Outcomes - Final Draft 12/8/2022

Carine Matters	Evidence
Healthy Communities - Better Health	
Promote healthy eating by running a café at Tintern House	The number of people using the café - The menu shall be promoting healthy eating through various measures including for example identifying nutritional content
Environment Matters	Evidence
Environmentally Aware Communities	
Ensure that Tintern House and surrounding area is kept clean and tidy	The area will be litter picked by the people with Learning Disabilities, with support, on a weekly basis.
Encourage recycling within the Tintern House projects	A significant number of the projects undertaken on site shall promote recycling or have recycling as one of their guiding principles of operation All of our projects aim to be environmentally friendly: Spokes - recycling second hand bikes, Go Green - sorting and recycling cans, glasses, plastic, etc, and Twigs - using pots that are recycled and non peat based compost.
Learning Matters	Evidence
Improved Leisure Facilities	
Tintern House to be used as a base for community events and activities	Activities held at the centre. These will be chargeable events to cover costs of room hire etc and to raise money for the Charity
Regeneration Matters	Evidence
Economically Active Communities	
Our projects will give the opportunity for volunteers to gain practical experience, build confidence and self-esteem. They will be working with our group of people who have learning disabilities, from moderate through to more complex needs. They will be given full support with regard to this.	No of volunteer hours per year: Year 1 = 350. Year 2 = 1190. Year 3 = 2030. This totals 3570, being the Community Output element required for the Lottery grant. Thereafter the aim is to achieve a minimum of 1061 volunteer hours per annum. This is calculated to cover the assessed rental of £13800.00, by the calculation of 1062 x £13 (hourly rate for skilled volunteer) = £13806.00. In reality the aim is to achieve many more hours than this.
To support people with moderate Learning Disabilities to learn and develop skills, that will move people closer towards work.	By developing paid work opportunities from the Charity where possible in association with Dudley Council and other local businesses and enterprises. To show that a minimum of 30% of participants for such skill development courses have demonstrable moderate learning disabilities.
Quality Service Matters	Evidence
Equal Opportunities	
Ensure that the services provided within the building are used by and accessible to people with disabilities	To demonstrate that activities are inclusive and access is appropriate for people with disabilities.