

**Minutes of the Ernest Stevens Trusts Management Committee
Monday 30th January, 2023 at 6.00pm
in Dudley Town Hall, Dudley**

Present:

Councillor I Kettle (Chair)
Councillor A Hopwood (Vice-Chair)
Councillors D Borley, J Cowell, T Creed and T Crumpton

Co-opted Members

D Sparks (Friends of Stevens Park, Quarry Bank)

Officers:

M Bieganski (Strategy and Governance Section Manager), D Fildes (Parks Development Manager – Green Care), D Mcnaney (Senior Principal Accountant), R Tilley (Funding and Projects Manager – Green Care), M Wilcox (Principal Lawyer) and L Jury (Democratic Services Officer).

Also in attendance:

Three Members of the Public.
A representative from WeLoveCarers for agenda item nos. 8 and 9.

23 **Apologies for Absence**

An apology for absence were submitted on behalf of Mrs H Rogers.

24 **Appointment of Substitute Members**

There were no substitute Members appointed for this meeting of the Committee.

25 **Declarations of Interest**

No Member made a declaration of interest in accordance with the Members' Code of Conduct.

26 **Minutes**

Resolved

That the minutes of the meetings held on 24th October, 2022 be approved as a correct record and signed.

27 **Change in order of Business**

Pursuant to Council Procedure Rule 13 (c) it was:

Resolved

That the order of business be varied and that the agenda items be considered in the order set out in the minutes below.

28 **5g Mast Application – Wollescote Park – verbal update**

The Strategy and Governance Section Manager gave an update on the situation with regards to a planning application, and in doing so, advised that Corporate Landlords had been involved in discussions with Cornerstone for the grant of a lease for a 5g mast to be erected in Wollescote Park, and it was noted that it had been emphasised that negotiations were still subject to Charity Commission approval for the grant of the lease.

The Chair commented on a further application that had been received to install another mast in Pedmore, Stourbridge and referred to the number of masts already in-situ in the Pedmore area.

Councillor Crumpton made reference to an email that he had submitted, as set out on page 14 of the agenda, in relation to his opposition to the erection of a mast in the park and requested a full briefing on the negotiations that were being undertaken with the Council and Cornerstone, as although a rental of £700 per year had been proposed together with a compensation payment towards the costs to the Council in dealing with the issue, no further information had been submitted in regard to issues such as the lopping of trees in the park, which appeared to be within the gift of the company who took on the lease. It was requested that discussions be held with the company to consider how to best preserve the area of park land in question, due to issues such as the installation of cabling that may be required and whether this would be below or above the ground and the impact this may have on the area. Clarification was sought on the discussions that the Committee as Trustees needed to undertake with the Charity Commission, and the need to strongly express the Committee's views on the application and likely impact on the park.

In response the Strategy and Governance Section Manager advised that the lease was a code lease and would set out the terms for the Council, stating the company's rights. The negotiations would focus on the rent, noting that the proposed figure of £700 per year may not be the figure accepted. Reference was also made to the compensation payment to the Council which the company assumed would 'fast-track' the agreement, however, assurance was given to Members that this would not be the case as the Charity Commission would need to sign-off on the agreement. In response to the issue raised in relation to the felling/lopping of trees, the Strategy and Governance Section Manager advised that the application had not included such issues.

Arising from the presentation, the Chair requested that the Strategy and Governance Section Manager submit a further report to the next meeting to update the Committee on any developments.

Resolved

- (1) That the report submitted on an application for the installation of a 5g mast in Wollescote Park, be noted.
- (2) That the Strategy and Governance Section Manager submit and report to the next meeting of the Committee updating Members on any further developments.

Mr and Mrs Bloomer were in attendance at the meeting and requested to address the Committee with regard to a Traffic Regulation Order.

Mrs Bloomer, Secretary of the Friends of Homer Hill Park, addressed the Committee raising concerns in relation to a proposal to install yellow lines to prohibit parking on Benjamin Drive, Homer Hill Park. Mrs Bloomer questioned the validity of the outcome of the public consultation that had been undertaken as she believed that insufficient publicity had taken place. She also questioned the validity of the decision that had been made as a result of the consultation as she believed that the decision had been based on a factual error in that Green Care, who had requested that the lines be installed to enable them to maintain the road, were not responsible for road maintenance. Reference was made to previous emails that had been submitted in relation to the responsibility of maintenance of the road over many years.

Concern was raised that should parking be prohibited on the road, acknowledging the already insufficient parking availability, the many football teams that attend the park and other park users such as dog walkers, would not be able to use the park. It was believed that Green Care officers would not be affected by park users parking on the road as the majority of the use took place on evenings and weekends when maintenance was not being undertaken.

Councillor T Crumpton advised that he was aware of this issue, as a Ward Member, and echoed the concern raised by Mrs Bloomer in relation to the popularity of the park and the problems that would be experienced if the prohibition was put in place, and proposed that the Committee, as Trustees, request that no further action be taken in relation to the installation of yellow lines on Benjamin Drive until the Committee had received further details.

Arising from the presentation, the Chair requested that the Parks Development Manager – Green Care investigate the issue raised by Mrs Bloomer and respond directly to her with a copy of the correspondence to be circulated to the Committee.

Resolved

That all correspondence set to the resident in relation to the concern raised, be forwarded to Committee Members.

The Committee considered a report of the Head of Neighbourhood Services on the development of changes to the lease for Tintern House since the agreed Heads of Terms on 16th July 2018.

The Funding and Projects Manager – Green Care presented the report, and in doing so, made reference to the July 2022 meeting of the ESTMC, the minutes of which were attached to the report as Appendix 1, where the Committee had agreed to proceed with the Emily Jordan Foundation Projects (EJFP) to agree and complete a 10 year lease, and on completion, Legal Services to contact the Charity Commission to request the grant of a 20 year lease, at the request of the EJFP.

It was advised that, subsequently, further discussions had taken place with EJFP to resolve outstanding issues. The outstanding issues with lease clauses were detailed in paragraphs 5 to 10 of the report submitted. It was noted that Corporate Landlord Services had included their recommendations in relation to the lease clauses, and stated that the Committee were requested to consider the option to operate on a commercial basis, or agree with the proposals from the EJFP and also consider whether the proposals submitted were within the best interests of the Council as the beneficiary, the Trustees, and the residents of the Borough.

In response, the Funding and Projects Manager – Green Care advised that to act as a commercial venture would not be in the spirit of the partnership agreement or the terms of the National Lottery grant.

Following the presentation of the report, Members asked questions, made comments and responses were provided, where appropriate, as follows:-

(a) **Fixtures and Fittings**

With regard to the funding responsibilities of the ESTMC for the café, the Funding and Projects Manager – Green Care confirmed that there was no requirement for any funding from the Tenant throughout the lifetime of the café or the lease. The Council and National Lottery grant had provided the fully fitted kitchen, but if any unfitted item expired during the lease, it was the café operator's responsibility to replace the item. It was confirmed that this would not include any items related to the commercially graded, stainless steel fitted kitchen. It was noted that the EJFP requested that if a decision was made for any reason to terminate the lease and exit the café, that approval be granted that any item that had been replaced by them could be removed by the café operator. It was noted that attached to the lease, would be an itinerary of items, which would include the serial numbers on each item that would clarify if the item was an original item or a replacement. This itinerary will also include what items were purchased by the Council and any items supplied by the Tenant for clarification purposes.

In response to a question raised in relation to the EJFP and the café operator, the Funding and Project Manager – Green Care advised that although it was omitted from the report, the café operator did pay a rent to the EJFP. In response, Legal Services advised that EJFP had not submitted evidence of the rent payment and it was requested that the rent agreement be submitted to Legal Services for information. The Principal Lawyer advised that the Heads of Terms did refer to a sub-lease and the Charity Commission had given consent to the lease and sub-lease. Concern was raised that the EJFP and the caterers had been in occupation for a sometime and negotiations were still being undertaken over the outstanding lease.

Concern was also raised that the recommendations the Committee were asked to consider, had not been clearly defined in the report specifically in relation to why the EJFP had been reluctant to sign the lease over many years, details in relation to the sub-letting to the caterers, and on other specific details.

It was noted that Legal Services and Corporate Landlord Services acted for the Council as Trustees and had put forward the best terms and conditions to protect the Council and were concerned that the proposals put forward by the EJFP diluted the protection to the Council. In response, the Funding and Project Manager – Green Care, reminded the Committee of the importance to work in partnership with charity providers.

Arising from the discussion held, the Committee:

Resolved

That the wording “any new non-fitted kitchen items that had been purchased by the sub-lease tenant, could be removed by the tenant on termination of the sub-lease,” be approved.

(b) **Tenant’s responsibility for the state and condition of the Property.**

In response to a question raised in relation to the condition the EJFP would accept, the Funding and Projects Manager – Green Care advised that the EJFP were willing to accept the wording “good repair and condition” in accordance with the terms of the National Lottery Heritage Grant and they believed that the condition recommended by Corporate Landlord Services did not take depreciation into account. The Strategy and Governance Section Manager referred to case law, stating that the wording “substantial repair and condition” would carry greater weight at the end of the term and would help protect the Council and the ESTMC by ensuring that the property be returned in the same condition that it was let.

Arising from the discussion held, the Committee:

Resolved

That the wording “must maintain the Property in good repair and condition,” be approved.

(c) **Outcomes**

In response to concerns raised in relation to how the outcomes were measured, the Funding and Projects Manager – Green Care, advised that EJFP submitted reports that were forwarded onto the National Lottery for consideration on a quarterly basis with regards to their outcomes. EJFP would be unwilling to accept the additional numerical values on the original agreed outcomes that Corporate Landlords Services were proposing.

Members commented that they were concerned that EJFP had not clearly demonstrated that they were fully engaging with the community and that community activities that had been undertaken had been organised by the Council and not the charity. D Sparks recognised the excellent work of the Community Development Officer (Green Care) in organising activities and it was proposed that the Funding and Projects Manager – Green Care, liaise with EJFP to stress the Council and the Committee's importance with regard to the outcome relating to community involvement, and that the EJFP needed to improve their community involvement in a positive way.

In response, the Funding and Projects Manager – Green Care reported that EJFP were developing projects and it was noted that Schools were now attending on a regular basis. It was anticipated that once a stronger financial position had been established, more community activities would be organised.

The Principal Lawyer reminded the Committee that the achievement of the outcomes by EJFP were in lieu of a market rent and that it could be added to the lease that outcomes could be reviewed on a regular basis between the Council and the EJFP, and if the outcomes were not being achieved, the Council could demand a commercial rent.

The Chair proposed that the Community Development Officer be invited to attend a future meeting of the Committee and present a report on engagement with the wider community.

Arising from the discussion held, the Committee:

Resolved

- (1) That the original outcomes, remain.
- (2) The Funding and Projects Manager – Green Care, liaise with EJFP in relation to improving community engagement and request that a report on this issue be submitted to a future meeting of the Committee for consideration.
- (3) That the Community Development Officer (Green Care) be invited to present a report to a future meeting of the Committee with regards to community engagement.

(d) **Rent review**

The Funding and Project Manager – Green Care made reference to paragraph 9 of the report in relation to a rent review and advised Members that within the heads of terms, there was not a rent review provision within the 10-year lease.

In response to Councillor' Creed's query as to how a review could be undertaken when no rent was received, the Principal Lawyer advised in relation to the 10-year lease, that the rent was paid in lieu of the charity's outcomes, as discussed previously in the meeting, however, should the outcomes not be being met, then a market rent could be requested or they could be requested to vacate the property.

The Strategy and Governance Section Manager advised that once a 10-year lease had been signed, Legal Services would contact the Charity Commission to request that a 20-year lease be granted at the request of the EJFP. Corporate Landlord Services proposed that if a 20-year lease be authorised, that included in the lease be a review of the rent in the 10th year and the Committee be given the opportunity to also reviewing the outcomes to ensure that the Committee were satisfied with both aspects.

In response, the Principal Lawyer referred Members to paragraph 3 of the report, which outlined the decision made by the Committee at their meeting on July 2022 in respect of granting the 20-year lease, and Members' attention was brought to the final sentence which stated that ".....apart from the term of years, for all other terms and conditions to be exactly the same as the 10-year lease."

Arising for the presentation of the report, the Committee:

Resolved

That the approval granted by the Committee at its July 2022 meeting, as set out in the report submitted, remain.

30 **Mary Stevens Hospice, Hagley Road, Stourbridge – Lease Terms**

A report of the Director of Regeneration and Enterprise was submitted in respect of Mary Stevens Hospice, Hagley Road, and the terms of their lease.

The Strategy and Governance Section Manager presented the report, and in doing so, advised that at the last meeting of the Committee, it had been requested that further details be submitted providing specific information relating to the terms of the lease for the hospice. Reference was made to paragraph 10 of the report which outlined that the terms of occupation that included the provision of a lease for 75 years, at a rent of £39,100 per year subject to a review every five years. The tenant paid a peppercorn rent on the basis that previously agreed outcomes were delivered, and those outcomes were delivered on a landlord basis. On reviewing the lease, it had emerged that the outcomes could be reviewed and changed, if appropriate, annually.

In response, the Chair made reference to a recent visit he had undertaken to the hospice and the exceptional quality of care shown to the patients by the staff at the hospice and the great service the hospice provided to the Borough's residents was acknowledged.

Resolved

That the report submitted regarding the terms of the lease for the Mary Stevens Hospice, be noted.

31 **Mary Stevens Centre – Current occupation**

The Committee received a report of the Director of Regeneration and Enterprise on the current occupation of Mary Stevens Centre, the terms of such occupation and the extent of unoccupied space within the centre and requested that the Committee advise Officers as to the way the Trust wished to proceed with further occupation requests.

The Strategy and Governance Section Manager presented the report, and in doing so, advised that at the last meeting, it had been requested that further details be submitted on the current occupiers and their basis of occupation, and it was noted that a representative of one of the tenant's currently in occupation in the property was in attendance at the meeting.

Referring to the existing tenant, it was noted that their outcomes were accepted in lieu of rent and as a result, no income had been generated to maintain or upgrade the property to meet modern day requirements. When work was required to update the property, reliance had been put on the existing tenants to raise funds to undertake the conversions. To address this issue, the Committee was requested to consider the proposal that going forward, only 50% of the rent would be accepted as tenants' outcomes, with the remaining 50% being funded to help develop a maintenance budget.

Arising from the presentation of the report, Councillor T Crumpton recognised the excellent work undertaken by the existing occupants and made reference to the complexities of the building and the problems experienced by the tenants with the short-term leases agreed that were seen as a barrier in certain circumstances to applying for funding. It was proposed that rather than requesting a 50% income from tenants in occupancy of the property, the Trust enter into more long-term agreements with the tenants to provide an opportunity for them to apply for funding.

The Chair raised concern with regard to a previous proposal that had been considered by the Committee from the Mary Stevens Hospice to convert the centre into a convalescent care facility which the Committee had agreed would not be viable for the property and surrounding site, and the hospice should be encouraged to investigate an alternative site for the facility should they wish to continue with their proposal. It was proposed that the Committee monitor this situation going forward.

Members agreed with the proposals put forward to liaise with tenants with regards to extending the period of their leases which would provide longer-term security to the tenants, which would encourage them to maintain or modernise the property and provide them with the opportunity to apply for funding to enhance the facilities and opportunities offered to the public.

Resolved

- (1) That the report submitted on the Mary Stevens Centre with regard to the current occupation and the terms of such occupation, and comments made by Members as stated above, be noted.
- (2) That Corporate Landlord Services liaise with the current occupants of the centre to discuss extending their lease period, where appropriate.
- (3) That any future proposals for the conversion of the centre by the Mary Stevens Hospice remain under review and any proposals for conversion be submitted to the Committee for consideration.

A report of the Head of Neighbourhood Services was submitted on proposals to manage Personal Trainers operating in Council owned Parks and Open Spaces.

The Parks Development Manager (Green Care) presented the report and, in doing so, advised that following the October meeting of the Committee where this issue had been considered, the Parks Development Team had been liaising with Legal Services to develop a protocol which had included researching the systems in operation in other metropolitan authorities across the country. It was noted that most authorities operated a permit system, rather than granting a lease to Personal Trainers, and it was the view of Officer's that this would be the most appropriate way to manage the situation going forward, and reference was made to paragraph 5 of the report which outlined a set of terms and conditions that were being drafted.

In conclusion, the Parks Development Manager (Green Care) advised that the application form would also be revised, alongside the terms and conditions, and a standard letter for each operator regarding the acceptance and approval of the booking would be developed. Once the documentation had been reviewed by Legal Services, a further report would be presented to the Committee for consideration and approval.

D Sparks welcomed the report and proposed that each Personal Trainer be requested to provide a Risk Assessment to be reviewed in the event of an accident, and that areas of the park be designated for the use of Personal Trainers and their customers and that they be made aware that they refrain from using areas not designated for that specific activity.

Councillor J Cowell referred to paragraph 4 of the report that made reference to ...*Council owned parks and open spaces* ... and requested that the documentation referred to Trust owned parks and open spaces where appropriate. It was also requested that the granting of permits be limited and reviewed to ensure that the activities being carried out by the Personal Trainers did not become a burden on other park users, that consideration be given to the introduction of 'quite days' where bookings in specific parks were not permitted on certain days, and that feedback or any complaints that had been received on activities that were being undertaken in the parks, be retained and reviewed when the request for the renewal of a permit be submitted.

In response, the Parks Development Manager (Green Care) advised that a map would be developed which would outline specific areas within the parks where the Personal Trainers would be allowed to undertake their activities. With regard to a review, it was noted that there was currently a twelve- month rolling programme in operation and it was proposed that all Trainers be reviewed in a financial year, and a report be submitted to the Committee for consideration on the activities of all operators within the parks and open spaces owned by the Trust. The limitation on the numbers of permits granted on each park was acknowledged.

In response to a question raised by the Vice-Chair in relation to safeguarding, the Parks Development Manager (Green Care) confirmed that all operators would need to complete an application form which would include the need for a Disclosure and Barring Services (DBS) check, safeguarding procedures already in operation would be undertaken should children be involved, Risk Assessments relating to their specific activity and risk assessments relating to the involvement of medical assistance, should an accident occur in the park, would also need to be submitted, and a check would be undertaken on appropriate qualifications of all operators before any permit was granted.

Resolved

- (1) That the report submitted on the parks licensing scheme, and comments made by Members as stated above, be noted.
 - (2) That a further report in relation to the scheme be submitted to a future meeting of the Committee for consideration.
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33 Questions Under Council Procure Rule 11.8

There were no questions to the Chair pursuant to Council Procedure Rule 11.8.

The meeting ended at 8.00pm.

CHAIR