

## **Minutes of the Ernest Stevens Trusts Management Committee**

Monday 16<sup>th</sup> July, 2018 at 6.00 p.m.  
in Committee Room 3, The Council House, Dudley

### Present

Councillor I Kettle (Chair)  
Councillor H Rogers (Vice-Chair)  
Councillors J Cowell and A Hopwood

### Co-opted Members

D Sparks (Friends of Stevens Park, Quarry Bank)

### Officers

R Owen-Morgan (Section Engineer – Civil Engineering and Flood Risk Management), L Stuffins (Green Space Team Leader), T Webb (Principal Property Surveyor) (Place Directorate); C Ludwig (Finance Manager), M Wilcox (Principal Lawyer) and H Shepherd (Democratic Services Officer) (Chief Executives Directorate).

### Also in attendance

S Jackson – Group Chief Executive Officer, Mary Stevens Hospice (for agenda item no. 6 – Request received from Mary Stevens Hospice to consider assignment of the lease)  
R Bishop – Litigation Lawyer, Mary Stevens Hospice (for agenda item no. 6 – Request received from Mary Stevens Hospice to consider assignment of the lease)  
T Philips – Severn Trent Water (for agenda item no. 8 – Stanley Road Drainage Road)

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#### 1 **Apologies for Absence**

Apologies for absence from the meeting were submitted on behalf of Councillor G Partridge, Councillor V Wale, C Lees and M Sparks.

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#### 2 **Appointment of Substitute Member**

It was noted that D Sparks had been appointed to serve as a substitute co-opted member for M Sparks, for this meeting of the Committee only.

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### 3 **Declarations of Interest**

Councillor H Rogers declared a non-pecuniary interest as Chair of the Friends Group for Mary Stevens Park and Swinford Common and her involvement with the Management Team for Mary Stevens Park.

Councillor J Cowell declared a non-pecuniary interest in that she had previously served on the Board of Trustees for Mary Stevens Hospice.

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### 4 **Minutes**

In referring to minute no. 36, in particular resolution numbered 3, the Chair confirmed that following the comments made at full Council in respect to Coseley East Ward Councillors not receiving the Committees decision or updated on the progress of the issue, this had now been resolved and a detailed email had been circulated to the relevant Members. It was noted that when making future resolutions, the Officer responsible for progressing the action should be identified.

#### **Resolved**

That the minutes of the meetings held on 17<sup>th</sup> April and 1<sup>st</sup> May, 2018, be approved as correct records and signed.

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### 5 **Public Forum**

No issues were raised under this agenda item.

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### 6 **Request received from Mary Stevens Hospice to consider assignment of the lease**

A report of the Strategic Director Place was submitted with regards to a request from Mary Stevens Hospice for the assignment of the lease dated 6<sup>th</sup> February, 2018.

The Principal Lawyer presented the report in detail and in doing so provided background information in respect of the scheme granted by the Charity Commission to enable a lease for a 70 year term to be granted to Mary Stevens Hospice and the subsequent approval by the Ernest Stevens Trust Management Committee on 1<sup>st</sup> May, 2018, for consent of a legal charge to be entered into in favour of a High Street bank.

It was reported that the lease dated 6<sup>th</sup> February, 2018 contained a covenant that did not allow the tenant to assign the lease to a third party, however it was noted that it would not be unreasonable for a lease of this length of time to have provision for assignment or underlet to be allowed.

It was noted that following consent of the legal charge by the Committee, the High Street bank had specified that prior to them entering into a legal charge or granting monies to Mary Stevens Hospice, the lease must be amended to allow the assignment to a third party who would be able to abide by the permitted user covenant.

It was stated that should the Committee be minded to grant the deed of variation, the Council would request that the existing tenant entered into an Authorised Guarantee Agreement, that would ensure the obligations under the terms of the lease were adhered to and the tenant liable as a sole or principal debtor. Any assignment would only take place with the written consent of the Landlord and that any assignee would be required to comply with all covenants and conditions of the lease. Therefore, upon a breach of any covenant, the Council could take immediate action against the tenant or the assignee.

A Member expressed concern in respect to the lack of information that had been provided from the outset and the difficult position the Committee had been put in without knowing the basics and consequences of their actions. Concerns were also raised in relation to the Charity Commissioner being unaware of the legal charge or proposed inclusion of an assignment to a third party within the lease and did not feel that the Committee had the right or power to change the deed of gift.

In responding to issues raised, the Principal Property Surveyor stated that Officers did not include the right to assign to a third party in respect of community asset transfers, as this was not normal practise for Dudley, as the Council was letting at an undervalue and wanted complete control over tenant.

The Principal Lawyer commented that the inclusion of the covenant to enable the lease to be assigned to a third party, strengthened covenants within the lease to alleviate risk to the Council. It was further commented that the Charity Commissioner had agreed for the scheme to be granted with terms and conditions to be negotiated and that they would expect these issues to be raised whilst negotiating the terms and conditions for a lease for a period of 70 years.

In responding to a question raised in relation to the details of the proposed third party that the lease would be assigned, S Jackson – Group Chief Executive Officer, Mary Stevens Hospice commented that should the need arise, the assignee appointed would be an organisation that could comply with the permitted user covenant as referred to in the lease. The exact details of such organisation were unknown at this stage, as that decision would be made at the appropriate time and if necessary, but that it would most likely be another hospice provision.

R Bishop, Litigation Lawyer for Mary Stevens Hospice commented that it would not be Mary Stevens Hospice wish or intention to assign the lease to a third party and the ultimate achievement was to improve facilities of care at the hospice. He reiterated the comments made by the Principal Lawyer in that the lease would be strengthened by the additional covenants and that the Council would initially vet any assignee prior to taking over the lease. Therefore, if Trustees did not consider the proposed assignee to be adequate to provide the required service or adhere to the covenants of the lease, appropriate action could be taken by the Council to forfeit the lease.

Following a detailed discussion, it was

**Resolved**

That the request received from Mary Stevens Hospice to allow the lease to be assigned to another party, provided the permitted user is complied with and that any consent is subject to prior consent of the landlord being obtained and an authorised guarantee agreement be entered into by the tenant, be approved.

(Councillor H Rogers voted against this decision and requested that her name be recorded in the minutes.)

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**7 Stevens Park, Wollescote – Restoration of Park Walls Update**

An update was provided to Members on the restoration of park walls at Stevens Park, Wollescote.

Funding for the restoration project was discussed and the Greenspace Team Leader stated that discussions were taking place with the Senior Conservation Officer as to whether English Heritage funding would be available to support the project, however it was acknowledged that the maintenance of the wall was the responsibility of the Local Authority.

In responding to a question raised in respect to the time it would take to complete the restoration works, the Greenspace Team Leader did not envisage the construction work to take long to complete, but the period prior to the work commencing was difficult to stipulate.

**Resolved**

- (1) That the update in relation to the restoration of Park Walls at Stevens Park, Wollescote, be noted and that further updates be provided to future meetings of the Committee.
  - (2) That the Greenspace Team Leader, together with the Construction Design and Facilities Manager continue deliberations with the Senior Conservation Officer and the Strategic Director Place to identify funding for the restoration project.
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**8 Stanley Road Drainage Road**

The Section Engineer – Civil Engineering and Flood Risk Management and Tom Philips, Solution Engineer of Severn Trent Water, was in attendance at the meeting and gave a detailed presentation on the Glen Road flood alleviation and in doing so provided details of the existing flooding issue; highlighted what was causing the flooding and outlined the solution options that had been identified by Severn Trent Water.

It was stated there were five houses in Glen Road that were predominately affected by the external flooding. Investigations had been undertaken to establish the cause of the issue which had been identified as a poor functioning hydraulic system and therefore it was considered to be a Severn Trent Water problem, hence their agreement to completely fund the project.

A number of solution options had been considered however it was deemed that the most viable option, subject to approval by the Severn Trent Water Management Board, would be for a gravity pipe to be inserted underneath the existing culvert and for a Surface Pumping System (SPS) pump station to be located in the car park on Stanley Road. It was noted that this solution would require the existing gate entrance to the car park to be relocated to allow Severn Trent Water access to the pump station for maintenance works. However it was proposed that an identical entrance would be erected adjacent to the existing entrance allowing the Council the same access as present. It was also commented that to ensure that no car parking spaces were lost, it was proposed to construct additional spaces further down the car park.

In responding to a question raised by a Member, the Solution Engineer confirmed that the only visual on the site would be a manhole cover protecting the well and a SPS kiosk, which would be fenced out of view. It was noted that the pumps would only become operational in storm conditions and that it would not be a foul pumping station.

(At this juncture, Councillor H Rogers declared a non-pecuniary interest as she had previously attended a site visit of the site.)

Arising from concerns raised with regard to flooding in other areas within close proximity to the site, the Solution Engineer commented that due to the amount of new developments in the area, the existing culvert struggled to manage and that the proposed improvements were not envisaged to resolve all flooding issues. The Section Engineer also commented that planning applications that proposed to erect ten or more properties were now referred to the Street and Green Care team for comments in respect of flooding and drainage and developers were required to incorporate sustainable drainage schemes within their development proposals.

In responding to a question raised, the Solution Engineer reiterated that approval of the project by the Severn Trent Water Management Board was required prior to works commencing and timeframe of which was unknown. It was noted that in the interim the Local Authority would continue to provide support and sandbags to help protect properties from the risk of flooding.

The Chair thanked Officers for their presentation and requested that further updates on the progress of the project be provided to future meetings of the Committee.

### **Resolved**

- (1) That the information presented at the meeting and the Committees support of the proposed scheme, be noted.
- (2) That further updates on the progress of the project be provided to future meetings of the Committee.

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9 **Tintern House, 74 Park Road, Stevens Park, Quarry Bank, to consider granting a new lease to The Emily Jordan Foundation**

A report of the Strategic Director Place was submitted on the request to grant a new 10 year lease to The Emily Jordan Foundation for Tintern House on completion of Heritage Lottery Fund Improvements in 2021.

In presenting the report, the Greenspace Team Leader referred to the report submitted to the Ernest Stevens Trust Management Committee on 17<sup>th</sup> April, 2018 and the subsequent approval in principal to lease Tintern House to the Emily Jordan Foundation for a peppercorn rent for five years with break clauses.

It was noted that following the approval by the Committee on 17th April, 2018, Project Officers had met with Lottery Fund Officers, whom had specified that they would require the Council to enter into a 10 year lease due to their funding arrangements being over a 10 year period.

Further issues had been raised by the Emily Jordan Foundation in respect to the retail aspect and they had expressed the need for the operation to be financially sustainable and to generate income.

Members commented positively on the project and the proposed works to the park, which were considered long overdue.

In referring to the Draft Head of Terms, appended to the report submitted, in particular to the Board approval, it was requested that the wording be amended from Ernest Stevens Park Management Committee to Ernest Stevens Trust Management Committee.

### **Resolved**

- (1) That a 10 year lease to The Emily Jordan Foundation, at a peppercorn rent, with break clauses, subject to terms and conditions being negotiated and agreed by the Strategic Director Place, be approved.
- (2) That the Head of Terms, subject to the amendment as referred to above, be approved.
- (3) That consent be given for Legal Services to apply to the Charity Commission for a Scheme to allow the granting of the lease on the Heads of Terms attached to the report submitted and for the charitable organisation to raise income from sales together with the other outcomes detailed in the Heads of Terms.



A report of the Chief Officer, Finance and Legal Services was submitted on the progress and current position with regard to costs, income leases and the use of the land and buildings managed by the Trusts.

Following the presentation of the report, Members commented that the documentation did not identify the benefits to the Council from occupying land and buildings within the Trust, although it was recognised that the Council did maintain those sites.

In referring to Appendix 1 of the report submitted, in particular the information recorded in relation to Tintern House, Members commented that the House was currently occupied by Greencare.

In responding to a question raised, the Finance Manager confirmed that the information included in the report was for information only and would not be submitted to the Charity Commission as part of the Final Accounts.

### **Resolved**

That the information contained in the report on the progress and the current position with regard to costs, income, leases and the use of the land and buildings management by the Trusts, be noted.

The meeting ended at 7.30 pm

CHAIR