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**Ernest Stevens Trust Management Committee**  
**30<sup>th</sup> January 2023**

**Report of the Head of Service on Stevens Park Quarry Bank regarding the lease for Tintern House**

**Purpose**

1. To inform the Management Committee of the development of changes to the lease for Tintern House since the agreed Heads of Terms by Committee on 16<sup>th</sup> July 2018 – copy report and attached documents included.

**Recommendations**

2. It is recommended that:-
  - The Ernest Stevens Trust Management Committee note & approve the content of the report but at the same time considering the Deed of Gift and Scheme granted with the objective being that the decisions taken are within the best interests of the beneficiaries.

**Background**

3. At the July meeting in 2022, the committee approved that:  
“On the basis of EJFP completing the 10 year lease and underlease (both excluded from the provisions of the Landlord & Tenant Act 1954)..... Legal Services (are authorised) to write to the Charity Commission requesting the surrender of the 10-year lease and grant of a 20-year lease excluded from the provisions of the Landlord & Tenant Act 1954. Further, that apart from the term of years, for all other terms and conditions to be exactly the same as the 10-year lease”

4. Since that meeting the Council have worked with EJFP to resolve outstanding issues with lease clauses as follows.
5. **Utilities:**  
Given the current increases in energy costs & in order to enable EJFP to benefit from the Councils' competitive utility rates, the Council has agreed to pay the utilities bills & recharge EJFP.
6. **Fixtures & Fittings:**  
We have provided a fitted commercial kitchen & café (with an equipment value of approximately £18,000) with the National Lottery Heritage & Council funds.

We have agreed to adopt the National Lottery Heritage view that the grant is a 'start up', that depreciation should be taken into account & that there is no requirement to replace fixtures & fittings.

If we have to find a new charity partner and/or café operator in the future, they will potentially have to provide their own equipment.

*Corporate Landlord Services:* the trust is providing a fully fitted out café. While it has been paid for by grant, the tenant is utilising this rent free and on the basis described above will not be replacing the trust owned items when they wear out. In the event a new tenant is required the trust will have to fund either directly their replacement or indirectly do so by a further rent free. The trust is not receiving a rent is not establishing a fund for such replacement.

7. **Tenant's responsibility for the state and condition of the Property:**  
In accordance with the terms of the National Lottery Heritage grant condition that:  
(we) "must maintain the Property in good repair and condition", we have accepted that the same term be used in EJFPs' lease as opposed to 'substantial repair and condition' as is sometimes required.

We have taken this viewpoint as we believe that some wear & tear is reasonable, that depreciation should be taken into account, (as recommended by the National Lottery Heritage Fund) & because we would not (e.g.) expect the property to be returned with new floor coverings & finishes. It is a condition that the property be well maintained and redecorated internally & externally at the end of the lease.

*Corporate Landlord Services:* There is substantial case law around the meaning of substantial repair and condition which would allow the trust to receive back the property in the same state in which it was let. Accepting such a lesser description of good repair and condition means the trust is prepared to accept a property in a lesser condition to that in which it was let and therefore prepared to accept it will have to fund additional investment to bring it back into a suitable state. The trust in not receiving a rent is not establishing a fund for such investment.

## 8. **Outcomes:**

Outcomes were agreed with EJFP & the National Lottery Heritage Fund when a partnership agreement was signed between the Council & EJFP in 2018. It is accepted that achievement of the outcomes by EJFP as monitored by the Council, are in lieu of a market rent of £13,500 per annum.

Essentially the outcomes are as follows:

- EJFP to deliver their three skills development projects to individuals with disabilities (ref National Lottery Heritage Grant Approved Purposes)
- To promote healthy eating in the café
- To maintain a clean & tidy environment around Tintern House
- To encourage recycling within the Tintern House Projects
- To use Tintern House as a base for community events & activities
- To build a volunteer base & report their hours
- To support people with moderate learning disabilities move towards work

Since the original outcomes were agreed, we have agreed the additional requirement that 30% of participants in the projects have demonstrable moderate learning disabilities.

We will be pleased to demonstrate to the committee, in separate annual reports or as requested, evidence that the outcomes are being met as required to offset the market rent.

*Corporate Landlord Services:* It is important to ensure the outcomes are measurable with numbers to achieve. It should be noted the outcomes relate to the services EJFP are providing and the trust assure itself that such outcomes meet the requirements of the trust given such outcomes are being received in lieu of rent.

**9. Rent review:**

Within the 10-year lease there is no rent review provision (nor provision to amend the outcomes).

Whereas it may be considered that a rent review & update of the value of the market rent is appropriate (especially if a 20-year lease is agreed by the Charities Commission), it is the view of officers that it would be unreasonable to extend or propose further outcomes to those already agreed with EJFP & the National Lottery Heritage.

*Corporate Landlord Services:* The outcomes are being established now at a moment in time. Some of those outcomes will be overtaken by events and become outdated or outmoded to a future situation. The needs of the trust will change over time. Given the trust is accepting outcomes in lieu of rent the trust needs to be able to revise such outcomes to meet its requirements going forward. Equally when the rent is reviewed within the proposed 20 year lease the trust and EJFP will need to adjust the outcomes including to change their scope or increase their extent to accord with the revised rent.

**10. Café Lease:**

It is noted that until the lease with EJFP is completed, the underlease with the sub-tenant/Café operator cannot be completed.

*Corporate Landlord Services:* It should be noted that EJFP are already in occupation of this property and operational.

## **Finance**

11. There are no financial implications to the Trust, derived from matters in this report.

## **Law**

12. Section 1 of the Localism Act 2011 provides Councils with the general power of competence to do anything that individuals generally may do, subject to Sections 2 to 4, and Section 105, 117-123 of the Charities Act 2011 gives power to authorise dealings with charity property (as amended by the Charities Act 2022).

## **Risk Management**

13. 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.
  - A new café operator may potentially have to provide their own equipment.
  - The Council may not be able to recoup all utility charges.

It is considered that due to the ongoing partnership working with the charity & with the requirement to comply with the National Lottery Heritage grant conditions for 20 years, that the likelihood that any of the above risks would suddenly emerge is low & that the Council would be in discussions with EJFP & the National Lottery Heritage Fund to minimise & mitigate any risk wherever possible.

## **Equality Impact**

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

## **Human Resources/Organisational Development**

15. Not applicable to this report

## **Commercial/Procurement**

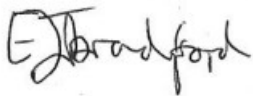
16. Not applicable to this report

## **Environment/Climate Change**

17. Proposals in this report do not have any direct impact on the environment or climate change.

## **Council Priorities**

18. 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**

- Agenda item 9: (Minutes of ESTMC 16<sup>th</sup> July 2018: Tintern House, 74 Park Road, Stevens Park, Quarry Bank, to consider granting a new lease to The Emily Jordan Foundation).

# Appendices

