

Southend-on-Sea Borough Council

Report of Executive Director Finance and Resources

To
Council
(Acting as Sole Trustee)
On
10 December 2020

Agenda
Item No.

Report prepared by:
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Roots Hall and Fossetts Farm – Trust Matters

Trust Business (not Council Business)

Part 1 Agenda Item

1. Purpose of Report

- 1.1 To enable all elected Councillors of the Council, acting as Sole Trustee (“the Trustee”) for each of the Jones Memorial Ground, Victory Sports Ground and Youth Commemoration Ground Trusts (“the Charities”) to operate and take decisions on behalf of the Council (as Trustees), at all times acting in the best interest of each Trust, subject to any Charity Commission approvals as may be required, to facilitate the land transactions required for the proposed Roots Hall and Fossetts Farm developments to progress.
- 1.2 This report directly cross-references the report to [Special Cabinet on 24 November 2020](#) (the Cabinet Report) which serves to set the context and reasons why the decisions are required. That report makes specific reference at paragraph 1.3 and recommendation 2.5 to the need for decisions to be made by the three trusts and that these will be considered at Full Council on 10 December 2020.

1.3 Councillors Role as Trustees

The Council is the sole Trustee of each of the three Charities. Whilst Councillors are in their position as Councillors, they have the responsibility of Trustees in exercising influence and control and administering the will of the Council as the sole Trustee. Therefore this report refers throughout to “Trustees” in to ensure Councillors are wearing “a Trustee hat” rather than their “councillor hat” when taking decisions in relation to the Charities. The Trustee has the power to manage each of the Trust’s land, is responsible for decision making and oversight of each of these Charities, subject to the governing documents of each Trust and, essentially, at all times acting in the best interests of each Charity.

The primary duties of the Trustees, as well as acting in the best interests of each Charity, are to observe the Charities governing documents; safeguard the Charity's assets; and avoid conflicts of interests.

2. Recommendations

- 2.1 That the Council as Trustee note the Cabinet Report and associated minutes of Cabinet and Policy and Resources Scrutiny Committee.
- 2.2 That, the Council as Trustee agrees to make the following decisions subject to any Consent or Order of the Charity Commission in respect of each Trust (as may be required):
 - 2.2.1 On behalf of the **Jones Memorial Recreation Ground Trust**, to the grant of an easement along the northern section of the Jones Memorial Recreation Ground on the terms, and as shown on the plan set out at section 3 of this report and to note that the existing car park serving the recreation ground will be replaced on like terms.
 - 2.2.2 On behalf of the **Victory Sports Ground Trust**, to the appropriation and/or sale of a small section of land adjacent to Sutton Road/Eastern Avenue roundabout to public highway use to enable the road capacity to be increased on the terms, and as shown on the plan set out at section 4 of this report.
 - 2.2.3 On behalf of the **Youth Commemoration Ground Trust**, to grant a shared use agreement with the Loxford Trust to ensure that the land can be used to support the physical education needs of local school children and in turn to enable the release of the former Cecil Jones Junior School playing field land for development (if required and subject also to the Secretary of State's Consent), on the terms set out in section 5 of this report.

3. Background

- 3.1 **Jones Memorial Recreation Ground (JMRG)** ([Charity Number 266261](#))
- 3.2 The Jones Memorial Recreation Ground is a Charitable Trust, registered under number 266261. The Object of the JMRG is stated as *"The provision and maintenance of a recreation ground for the benefit of children and young persons who have not reached the age of 25 years and are resident in the borough of Southend-on-Sea, without distinction of political, religious or other opinions."*
- 3.3 Southend-on-Sea Borough Council is the Trustee and all elected Councillors of Southend-on-Sea Borough Council act as the Trustee. The JMRG was given under trust to the Council by Robert A Jones, in memory of his wife, Emma J Jones in 1913. It has remained available for the public to use freely throughout the period. The Charity must operate in accordance with its governing documents, which consists of the original Trust deeds as varied by the Charity Commission Scheme dated the 21 November 1974 ("the 1974 Scheme" is attached at **Appendix 1**).

- 3.4 The ground provides football pitches for use for junior football and an outdoor children's play area. The Council maintains the JMRG for the Charitable Objects and meets any deficit incurred each year.
- 3.5 The proposal (as set out in section 12 of the Cabinet Report) is outlined below:
- 3.6 The land identified in green on the Fossetts Farm ownership plan (see below) is part of the JMRG.



- 3.7 This land is required principally to provide access for supporters on match days. It will also provide access to the residential development which will be leased to the Council and to JMRG itself.
- 3.8 It is proposed that the Trust grants an easement over this land to enable the construction and landscaping of a pedestrian and cycle route, referred to in the planning documents (to be amended) as 'Supporter's Way'.
- 3.9 The route will provide access to the land to the east and north which is to be developed to provide residential accommodation, a new football stadium and associated ancillary commercial and community uses and car parking. Rights are proposed to be granted in common with the Trust, the Council, the public and all owners, occupiers and visitors to the development on the land to the east and north (the development) of the easement strip. Rights would be reserved to ensure that the Council can access JMRG and the children's play area for maintenance. The easement strip does not impact on the use of the land as playing areas and will enable an income to be generated for the trust which will assist its sustainability.
- 3.10 The easement has been independently valued by the District Valuer at **£135,000** on the basis that a one-off premium will be paid to the JMRG. The easement would be required to be granted in perpetuity and the Trust would receive interest on the premium for as long as it holds it or, subject to the consent of the Charity Commissioners, it could be used to further the Objects of the Trust in other ways in due course.
- 3.11 The granting of an easement over Charity land is a disposal and the Trustee will want to be completely satisfied that any disposal is: (i) properly managed; (ii) in the Charity's best interests; and (iii) that the best price obtainable in the circumstances has been achieved.
- 3.12 The 1974 Scheme does not grant the Trustee an express power to dispose of Charity Land. The 1974 Scheme also requires the Trustee to revert to the

Charity Commission for a determination of the regularity and validity of any acts done or about to be done under the Scheme. As the Trustee has no express power to dispose of land, the Trustee can:

- (i) seek to rely on the either the statutory power to dispose of land contained in Section 6 of the Trusts of Land and Appointment of Trustees Act 1996, complying with the prescribed procedures and subject to the restrictions on disposing of Charity land contained in sections 117-121 of the Charities Act 2011 (includes the Trustee obtaining and considering a written report on the proposed disposition from a qualified surveyor instructed by the Trustee and acting exclusively for the Charity); or
- (ii) seek a Scheme, Order or Consent from the Charity Commission to confer the necessary power to grant the easement.

- 3.13 In this case, a written report from the District Valuer, acting for the JMRG Trust has been procured. The District Valuer has established the value at £135,000 and concluded that there is no requirement to further advertise the disposal given the circumstances.
- 3.14 The Charity Commission will be approached in relation to the three matters of the three trusts and its directions will be sought on the most appropriate route to proceed following a decision in principle by the Trustees.
- 3.15 It is therefore recommended at 2.2.1 above that the proposed easement is granted by the Trust to enable Supporters Way to be constructed. This is considered to be in the interest of the JMRG Trust for the following reasons:
- a) The JMRG will receive £135,000 in exchange for granting the easement. The capital receipt would be held by the JMRG which will benefit from any accrued interest and the capital could be used in due course to fund capital works and improvements to the JMRG.
 - b) The JMRG Trust will no longer need to maintain the land subject to the easement.
 - c) The JMRG and the public will still enjoy rights in common with others over the easement land.
 - d) Granting the Easement does not detract from the amenity value of the JMRG as it does not encroach on any playing areas and access to the children's play area is maintained.
 - e) The car park which serves the JMRG will be re-provided on like terms (lease-in to the Council) and in similarly close proximity to the ground.

4. Victory Sports Ground ([Charity Number 803621](#))

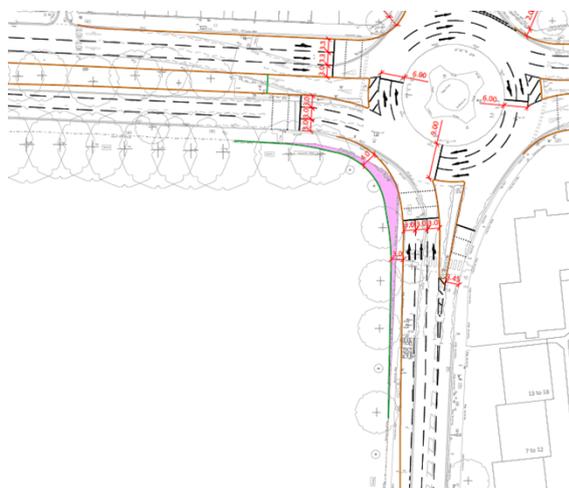
- 4.1 The Victory Sports Ground Trust (VSG) is a Charitable Trust, registered under number 803621. The Object of the VSG is stated as "A public park to be known as the "Victory Sports Ground" for the benefit of the inhabitants of the borough of Southend-on-Sea and the recreation of the public."
- 4.2 Southend-on-Sea Borough Council is the sole Trustee, represented by all elected Councillors. The Charity must operate in accordance with its governing

documents, which consists of the original Conveyance and Trust deed dated the 30 September 1921 (attached at Appendix 2). The VSG has remained available for the public to use freely throughout the period providing a general recreation area with football and cricket pitches which are hired throughout the year. The Council maintains the VSG for the Charitable Objects and meets any deficit incurred each year.

4.3 In respect of the appropriation and/or disposal of part of the Charity land and the Trustee will want to be completely satisfied that any disposal is: (i) properly managed; (ii) in the Charity's best interests; and (iii) that the best price obtainable in the circumstances has been achieved.

4.4 The proposal (as set out in section 13 of the Cabinet Report):

4.5 A very small sliver near the Sutton Road roundabout will be required to deliver the increased junction capacity. This land is part of the VSG and will need to be made subject to Highway rights under a s.278 Agreement. The area is shown shaded pink on the extract from the indicative general arrangement drawing below:



4.6 The land is currently being independently valued by the District Valuer on the basis that a one-off premium will be paid to the VSG. The Trust would receive interest on the premium for as long as it holds it or, subject to the consent of the Charity Commissioners, it could be used to further the Objects of the Trust in other ways in due course.

4.7 The Governing documents of the Charity do not grant the Trustee an express power to dispose of Charity Land; therefore the Trustee can:

- (i) seek to rely on the either the statutory power (as described in clause 3.12 above), complying with the prescribed procedures of the Charities Act 2011 (as above in clause 3.12 above); or
- (ii) seek a Scheme, Order or Consent from the Charity Commission to confer the necessary power to dispose of the land.

4.8 The Charity Commission will be approached in relation to the three matters of the three trusts and its directions will be sought on the most appropriate route to

proceed following a decision in principle by the Trustees.

4.9 It is therefore recommended at 2.2.2 above that the small area of land is transferred to public Highway pursuant to a s.278 (highways) agreement to enable the junction capacity to be increased. This is considered to be in the interest of the JMRG Trust for the following reasons:

- a) The VSG will receive a payment at least equal to the value of the land as determined by the District Valuer. The capital receipt would be held by the VSG which will benefit from any accrued interest and the capital could be used in due course to fund capital works and improvements to the VSG
- b) The VSG Trust will no longer need to maintain the land subject to the easement and the boundary adjustments will be dealt with as part of the s.278 works.
- c) The transfer of this sliver of land does not materially detract from the amenity value of the VSG as it does not encroach on any playing areas or the overall use of the park.

5. The Youth Commemoration Ground (YCG) ([Charity Number 301401](#))

5.1 The Youth Commemoration Ground is a Charitable Trust, registered under number 301401. The Object of the YCG is stated as “The provision and maintenance of a recreation ground for the benefit of children and young persons who have not reached the age of 25 years and are resident in the borough of Southend-on-Sea.”

5.2 Southend-on-Sea Borough Council is the Trustee, represented by all elected Councillors.

5.3 The YCG derives from a deed of Trust dated 1 March 1954 made between Edward Cecil Jones and the Corporation of the County Borough of Southend-on-Sea. Mr Jones donated £6,000 to the Corporation on Trust to purchase what was then known as the British Legion Memorial Ground. The original Trust Deed was replaced by a scheme made by the Charity Commissioners on 14 August 1974. Amongst other things, the scheme changed the object of the charity as described at 5.1 above. In 1993, the Charity Commissioners gave permission to sell the then YCG in conjunction with Higgs and Hill Developments and to use the sale proceeds to construct a new YCG, establishing the ground in its present location with the balance of funds being used to construct a new sports and leisure centre (Southend Leisure and Tennis Centre) which opened in 1996 with the diving pool being added in 2010.

5.4 The trust currently provides sports and leisure facilities for all and as part of that, fulfils its role as at 5.1 above. The YCG provides a range of pitches and associated changing facilities.

5.5 The Charity must operate in accordance with its governing documents, which consists of the original Trust deed dated 1 March 1954 as varied by the Charity Commission Schemes dated the 14 August 1974, 28 May 1993 and 23 August 1993 (“the Schemes” is attached at **Appendix 3**).

5.6 The proposal as set out in section 14 of the Cabinet Report:

- 5.7 As reported to Cabinet on 15 September 2020, the Council and the Football Club have been working on the principles of a shared use agreement in relation to Cecil Jones' use of the Youth Commemoration Ground (YCG) land, to enable the former Cecil Jones junior school playing fields (which are no longer used as playing fields and are identified in light and dark purple on the plan above) to be released by the Loxford School Trust limited (the School) so that that land can then form part of the Fossetts Farm development.
- 5.8 The principle is that the School will benefit from a capital receipt (from the developer of the Fossetts Farm land) for its land, the YCG Trust will benefit from investment to improve facilities, probably a refurbishment of the changing facilities via s.106. While these changing facilities serve the YCG and are used in connection with the sports played on the YCG, the block itself is owned by the Council, not the YCG however improvements to it will benefit the YCG generally which should lead to better income generation opportunities from hires, all whilst operating within the objects of the trust.
- 5.9 It is proposed that if the School needs to use the playing fields then a payment will be made by the school to the YCT to reflect a fair proportion of maintenance costs according to use and the school would have the use of the land for pre-agreed times for teaching physical education as part of the school curriculum and for playing and practicing sports during part of the school hours. The term would be commensurate with the requirements of the Secretary of State; probably 99 years. If the school does require the use of the land at some future date then this additional income, will help the self-sufficiency of the YCG Trust and mean that it needs to rely less on donations from the Council. The YCG should however not rely on this potential income because at present the school has no requirement to use the land. The proposed shared use agreement will help to safeguard future secondary school capacity and is intended to enable the possible requirements of the Secretary of State to be met if necessary in relation to the disposal by School of the former junior school playing field.
- 5.10 This matter needs to be finalised between all parties, including the Youth Commemoration Ground Trust, the School, the Council, the Football Club, Citizen, the Charity Commissioners and the Department for Education and this is expected to take some time. The shared use agreements will be made conditional on these matters being resolved.
- 5.11 It was previously understood that the granting of a Shared Use Agreement would not be considered a disposal however this position has been reviewed carefully and, particularly given that the agreement may be required to bind the land for 99 years, the proposed granting of a shared use agreement over Charity land is considered to be a disposal and the Trustee will want to be completely satisfied that any disposal is: (i) properly managed; (ii) in the Charity's best interests; and (iii) that the best price obtainable in the circumstances has been achieved.
- 5.12 At the time of writing, this matter is not finalised and it is unclear whether the shared use agreement will be required at all or whether the agreement would also need to include the Council in relation to the changing facilities, a matter that would be dealt with under Delegated Authority in due course.

- 5.13 In the case of this Charity, the Trustee has the power to sell Charity land under the powers contained in the 28 May 1993 Charity Commission Scheme (para 2), provided the proceeds of sale are invested in trust for the Charity (para 3). However, the proposed granting of a Shared Use Agreement is not a “sale” and there is no express power to make general dispositions under any of Schemes. The Trustee will therefore need to seek a Scheme, Order or Consent from the Charity Commission to confer the necessary power, to do so.
- 5.14 The Charity Commission will be approached in relation to the three matters of the three trusts and its directions will be sought on the most appropriate route to proceed following a decision in principle by the Trustees and in the case of the YCG, only if so required by the Secretary of State.
- 5.14 It is therefore recommended at 2.2.3 above to grant a shared use agreement with the School to ensure that the land can be used to support the physical education needs of local school children and in turn to enable the release of the former Cecil Jones Junior School playing field land for development (if required and subject also to the Secretary of State’s Consent). This is considered to be in the interest of the YCG for the following reasons:
- a) While the proposed shared use agreement would bind the land for 99 years, it is quite likely that it may never need to be exercised by the School. The Charity is expected to receive investment in the changing facilities under the s.106 Agreement, the details will be settled as part of the planning process.
 - b) If it is exercised, then the YCG will continue to support its Charitable Objects.
 - c) The YCG would receive income from the School if the shared use agreement comes in to operation – this would assist with maintenance costs and assist the YCG financial position, reducing its reliance on donations from the Council.
 - d) The proposed shared use agreement would not detract from the amenity value of the YCG and would enable its use in accordance with the Charitable Objects to be increased.

6. Other Options

The Trustees could decide not to agree the recommendations or seek to agree amended recommendations.

Trustees should be aware however that the recommendations have been carefully made to ensure that the decision can be taken in the best interests of the Trusts and also to enable the overall developments at Roots Hall and Fossetts Farm to proceed, subject to the matters set out herein.

5. Reasons for Recommendations

The reasons for the recommendations are set out above in the relevant sections of the report. See sections 3.12, 4.8 and 5.10.

6. Trust Implications

The Trust implications generally are set out in the body of the report.

Councillors should take additional assurance that the Charity Commissioners' consent will be required to enact the proposed arrangements and they will also act in the interest of the relevant trusts.

7. Legal Implications

- 7.1 Unless the Charity Commission confirm otherwise, the requirements of Sections 117 – 121 of the Charities Act 2011 apply and therefore, before entering into a contract to effect a disposal of land each Charity must get an order from the Charity Commission before they can complete that disposal.
- 7.2 The Trustees will therefore have the assurance that each Charity has acted lawfully and complied with any Charity Commission requirements including any orders so required to complete a land disposal and therefore avoiding conflict or risk.
- 7.3 The Department of Education has not yet set out its requirements on the School in connection with its proposed disposal of the former playing field however the proposed Shared Use arrangements are expected to be satisfactory. On this basis, the proposed shared use is commensurate with the Objects of the Trust and securing investment via the s.106 into the YCG facilities along with income based on usage to be paid by the School to the Trust is considered to be in the Trusts best interests, ensuring its longevity, reducing reliance on donations and helping the Charity to discharge the Objects of the Trust.

8. Background Papers

The report and minutes of [Cabinet 24 November 2020](#) (excluding the confidential appendix which is not relevant to these trust decisions)

9. Appendices

Trust Documents:

Appendix 1 – Jones Memorial Recreation Ground 1974 Scheme

Appendix 2 – Victory Sports Ground 1921 Trust Documents

Appendix 3 - Youth Commemoration Ground Schemes (14 August 1974, 28 May 1993 and 23 August 1993)