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Dear Mr Parmar

Highbury Hall Trust

I would like to thank you and your colleagues for meeting us recently to discuss Highbury Hall.

I have set out below a summary of the key points arising from our meeting.

- Birmingham City Council as trustee has delegated certain activities in relation to this and other charities to a new Trusts and Charities sub-committee. The members of this sub-committee are not themselves trustees of Highbury Hall but act on behalf of the Council as corporate trustee.
- The sub-committee has undertaken a full review of the position with regard to Highbury Hall and suspended the implementation of a decision taken by a previous Council sub-committee to sell Chamberlain House.
- The sub-committee recognises the need for transparency in the operation of the charity and for clear separation between activities undertaken by the charity and those undertaken by the Council in its statutory capacity.
- There has been a lack of separation in the past and the Council has used the charity's property for statutory functions outside the charity's purposes. However, the Council has also spent significant amounts on maintenance and repair of the property. On this basis, we are willing to concentrate on moving forward, rather than considering any possible restitution, but it is essential that the Council puts matters on a proper footing without further delay.
- The sub-committee is confident that it can develop proposals for increased use of Highbury Hall for charitable purposes, for example educational visits by schools. This will require some initial outlay on repairs and maintenance to the building.
- The current use of Chamberlain House as a Day Centre is likely to directly further the charity's purposes. This service is run by the Council but it is likely the charity could support it through the provision of accommodation. We would advise the sub-committee to read the Commission's publication *CC37 - Charities and Public Service Delivery – An Introduction and*

Overview to ensure they are clear on the restrictions in this area. This can be accessed in the Publications section of the Commission's website.

- The sub-committee recognises that the provision of conference facilities at Highbury Hall needs to be put on a proper footing. Assuming that the building is required for use for charitable purposes at certain times, it can be retained by the charity and let to generate income at other times. The letting of surplus space does not itself constitute trading so this would be within the charity's powers. The provision of services such as caretaking and catering does constitute non-charitable trading, however, and must be undertaken either by a third party or a trading subsidiary. If the sub-committee decides the charity should establish its own trading subsidiary it should contact the Commission for further advice.
- The preferred option for the sub-committee would be to retain Chamberlain House for use by local community groups in direct furtherance of the charity's objects. However, the committee members recognise that this must form part of an overall business plan which ensures the financial viability of the charity.
- The Commission acknowledges that the sub-committee is exploring options other than the disposal of Chamberlain House to fund repairs to Highbury Hall. However, we consider that based on the information provided this is still an option it may need to pursue to ensure the future financial viability of the charity. We consider that the Council should be given the flexibility to decide to dispose of this property if it is not required for the charity's purposes and if funds cannot be found from other sources to maintain Highbury Hall. A power of disposal for this property will therefore be given by scheme.
- There are four dwelling houses on the charity's land. The Commission will also grant a power to dispose of these properties by sale or lease in the scheme, extending the existing power in the charity's governing document to let properties for a term of up to seven years. It will be a matter for the Council to determine whether it is in the best interests of the charity to proceed by sale or by leases at market rent. The Council could only let at below market rent if this furthers the objects of the charity. A lease at below market rent to a caretaker as part of his overall remuneration package to ensure the security of the site would be acceptable.
- The proceeds of any sale of Chamberlain House or the dwelling houses would constitute permanent endowment and could only be spent on the charity's remaining property with the Commission's approval. This will not be covered in the scheme and therefore if the trustee wishes to apply the proceeds of any future sale it would need to obtain the Commission's consent by order. Depending on the information provided by the trustee about how the funds will be used, the Commission could authorise the expenditure with or without replacement.
- The scheme will only give the Council discretionary powers of disposal, providing greater flexibility rather than committing the Council to particular course of action. Due to the length of time for which this matter has been ongoing, we are keen to get a scheme in place as soon as possible, without waiting for the sub-committee to complete its current planning for Highbury Hall. It will be important for the Council to explain this to local residents so they are clear that making the scheme does not pre-empt any particular decision.

Please let me know if you have queries on any of these points or consider that there is a key point I have not covered.

Based on our discussions, I have produced a draft scheme for consideration by the sub-committee and this is attached. This is a fully regulating scheme which will completely replace the charity's existing governing document. I would welcome any comments you may have on the draft. I would also be grateful if you could provide descriptions of the land for inclusion in the schedule. We confirmed at the meeting that the map you provided matches that shown on our records. However, we prefer not to refer to maps in our schemes so it would be helpful if you could provide a description of the land, with Land Registry title numbers if possible.

Section 20 of the Charities Act 1993 (which was introduced by the Charities Act 2006 and implemented on 27th February 2007) covers the requirements for publicity when schemes are established, and effectively gives control of the publicity process to the Commission. It provides that we may now dispense with publicity altogether if we are satisfied that it is unnecessary, because of the nature of the scheme or for any other reason. Our general stance is that where the scheme is likely to be non-controversial, publicity will not be required. In light of the known public interest in this matter, however, we consider that the scheme could potentially be controversial and therefore publicity will be required. The Council will need to ensure that publication is undertaken in such a way that local people understand the purpose of the scheme. We can offer further guidance on publication when the contents of the draft scheme have been agreed.

I look forward to receiving your comments on the draft scheme, along with the completed scheme application form, in due course. If you have any queries in the meantime, please let me know.

Yours sincerely

Kate Waring

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