

Committee: Cabinet

Agenda Item

Date: 4 December 2014

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**Title: Saffron Walden Pig Market Charity,
Fairycroft Road Car Park**

Portfolio Holder: Cllr Barker and Cllr Chambers

Key decision: No

Summary

1. The District Council is the Trustee of the Saffron Walden Pig Market Charity which owns part of the Fairycroft Road Car Park, the other part being owned by the Council in its local authority capacity.
2. As part of the Waitrose redevelopment works the Council has retained the services of Mark Paynter of Chase and Partners to advise the Council. He has undertaken a report on behalf of the Charity as required by the Charities Act 2011 to give his advice to the Charity on the proposed land transactions. The Council in their role as Trustee need to consider the report and confirm their final agreement to the proposed transactions.

Recommendations

3. The Trustees agree
 - a. To exchange the land in its ownership shown on the Plan at Appendix 8 the Surveyor's report for the land owned by the District Council being of equivalent area shown on the same Plan on such terms and conditions as are reasonable including the granting of rights of way
 - b. To grant a lease (jointly with the Council) for 50 years to Waitrose Limited of the newly constructed car park on the terms set out in the Surveyor's report
 - c. To accept a lease back of the newly constructed car park from Waitrose Limited for 50 years less 3 days jointly with the Council on the terms set out in the Surveyor's
 - d. To the temporary relocation of the 6 spaces under the control of Self Build Limited to the Charity land during the period of the rebuild
 - e. To the redevelopment of the car park by Waitrose on the terms set out in the Surveyor's report
 - f. To enter into the Car Park Management Agreement with the Council and Waitrose on the terms set out in the Surveyor's report
4. To delegate to the Assistant Chief Executive –Legal the authority to conclude the legal documents following receipt of the Charity Commission approval and

in accordance with their requirements That the Charity's share of car park income split is 22.38% (with UDC having 55.7%, and the remainder to Waitrose).

Financial Implications

- The cost of the report from Chase and Partners has been covered by Waitrose, together with other Council costs.

Background Papers

- The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Impact

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Communication/Consultation	Charity Commission
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	The Trustees need to act independently from the Council and in the best interests of the Charity, and those interests will not necessarily be the same as those of the Council. The Charity's only asset is the car park land, and it is from that the Charity derives income that it can apply to its charitable purposes.
Sustainability	None
Ward-specific impacts	Saffron Walden Audley
Workforce/Workplace	Legal staff

Situation

- The Council is the sole trustee of the Saffron Walden Pig Market charity. The Charity owns part of the Fairycroft Road car park (a share equivalent to 66/303). The purpose and administration of the charity is set out in a Scheme approved by the Charity Commission in 1980 which states that the land has to be used as a car park for the benefit of the inhabitants of Saffron Walden and

the public and that any income should be applied for any charitable purposes for the general benefit of the inhabitants of Saffron Walden.

9. The land at Faircroft Road is the only asset the Charity holds and the only way that it can obtain income, which it then applies to charitable purposes through the provision of grants.
10. As previously reported to Members, the Council and Waitrose have been in negotiations over the upgrading of Faircroft Road car park, as part of Waitrose's scheme to extend their store. Members agreed in September 2013 to the principle of the proposals.
11. The requirements of the 1980 Scheme and the Charities Act 2011 are for the Charity to obtain Charity Commission consent to sell land and to enter into long leases of the land.
12. Before granting their consent, the Charity Commission require the Charity to have followed the requirements of the Charities Act 2011. These requirements are:
 - a. To obtain and consider a written report from a qualified surveyor
 - b. Follow your surveyor's advice as to whether to advertise the disposal or not,
 - c. Decide you are satisfied that the proposed terms are the best that can be reasonably obtained in the circumstances of the disposal
13. The Council has retained the services of Mark Paynter, a chartered surveyor of Chase and Partners to advise the Council and the Charity. He has prepared for the Charity a report that meets the requirements of the Charity Commission on the proposed land transactions and the terms and conditions thereof from the point of view of the Charity's interests – appended to this report.
14. The Council in their role as Trustee need to consider the report and confirm their agreement to enter in the land transactions if they are satisfied that it is in the best interests of the Charity and that the terms proposed are the best terms that can reasonably be obtained in the interests of the Charity. These may not be the same as the interests of the Council and Members need to be careful to consider this proposal only from the point of view of the Charity.
15. The Charity Commission when considering whether to give approval to the transaction will want to see that the Charity :
 - a. has obtained a realistic valuation for the property
 - b. has understood the professional advice received
 - c. has understood the powers and restrictions contained in the Charity's governing document
 - d. knows exactly what is being disposed
 - e. has made the case that the disposal is in the best interests of the Charity
 - f. has obtained the best terms for the Charity that can reasonably be sought in the circumstances
 - g. has managed any conflict of interest

16. Through the negotiations the Council has been able to secure a positive deal for the ongoing income split of 78.1% for PMT/UDC (an increase from the current 76.57%). To ensure that PMT does not lose out on income as a result of the deal the advice is to split the income so that PMT receives 22.38% of the total income and UDC 55.7%, with the remainder to Waitrose. Para 14.18 of the appendix refers.

Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
Transaction does not comply with Charity Commission rules	1- Advice has been sought and is being followed	3 – The Council as trustees would be in breach of their duties	Charity Commission advice has already been sought, and copies of the surveyor's report provided, and Trustees are acting in accordance with their advice.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.