

## **Appendix 2: Briefing Note: Review of the Council's Charitable Trusts – Merger, Retention and Closure Options**

### **1. Purpose of this Note**

This note provides an update following feedback from the Charity Commission on the potential consolidation (merger) of the land-based Trusts and the potential closure (wind-up) of the non-land Trusts. It sets out the legal position, feasibility, risks and recommended next steps.

### **2. Trusts in Scope**

The Land-Based Trusts:

- Salt Hill Playing Fields
- Langley War Memorial Fields
- Baylis War Memorial Garden

Important note: The Council does not hold the governing documents for the War Memorial Garden (Baylis). The Charity Commission has confirmed it is unable to determine whether the charity holds designated land or permanent endowment (explained further below).

The non-Land Trusts:

- James Elliman Trust
- Slough Glyndwr Trust
- Chalvey Millennium Green Trust

### **3. Charity Commission Engagement**

Following an enquiry to the Charity Commission substantive feedback was recently received providing an indication of their interpretation of the legal position.

### **4. Key Findings from the Charity Commission**

Most trusts hold designated land and/or permanent endowment. The James Elliman Trust holds an investment of c.£13k in permanent endowment which is capital that must be retained and cannot be spent. This is not included in the balances in Appendix 1 since it cannot be used.

Assets must be transferred on the same trusts and any restrictions must remain, unless the Council can amend these provisions, as explained below.

#### **4.1 Impact of Merger**

Assets must be transferred on the same trusts, meaning restrictions on what the Trust can do cannot be removed through merger. In practice, a merger would result in a change of trusteeship only and there would be no substantive change to purposes or asset flexibility.

#### **4.2 Alignment of Purposes (s.280A Charities Act 2011)**

To achieve a meaningful merger, charitable purposes would need to be aligned.

Under s.280A CA 2011:

- Trustees may resolve to amend purposes where it is expedient in the charity's interests;
- Charity Commission consent is required, and the Commission will consider:
  - The original purposes of the charity;
  - The desirability of maintaining similarity; and
  - The suitability of the purposes in current circumstances.

The Commission has indicated it is difficult to see how this legal test would be met, based on the information currently available. This may be something SBC may wish to explore if they wish to go down this route.

### **4.3 Closure of Charities**

Closure is relatively straightforward where assets are unrestricted. However, where land is designated or permanent endowment exists, closure becomes more complex and subject to legal constraints.

### **4.4 Chalvey Millennium Green Trust**

The Chalvey Millennium Green Trust requires further review of grant terms and engagement with the grant funder. Clarification is required as to whether the Grant Agreement has expired, which depends on the level of project expenditure. Recorded expenditure of approximately £18,000 suggests the grant terms applied for 25 years from 1998. Council confirmation will be required, including whether any additional funding was provided on similar terms. If the grant terms have expired and there are no other obligations, then this charity could be closed.

## **5. Feasibility of Closing All Trusts**

It is not feasible or beneficial to close all the Trusts. While some non-land Trusts may be closed, the land-based Trusts cannot meaningfully be wound up, because:

- The land must continue to be held on the same charitable trusts;
- Restrictions remain in place regardless of closure; and
- Closure would effectively amount to a transfer of trusteeship only.

## **6. Options**

### **Option 1 – Full Merger**

Unlikely to be feasible in practice. Restrictions remain and legal tests are unlikely to be met, unless the Council has information to prove otherwise.

### **Option 2 – New Charity Structure:**

Legally possible but of limited benefit as restrictions remain. The Council is also already named as corporate trustee to the Trusts.

### **Option 3 – Retain Existing Trusts (Recommended):**

Retain structure and introduce coordinated governance and management. This is the most practical and lowest risk approach.

## **Management of Open Spaces**

The Council can take on management of the open spaces in practice. However:

- The land must remain held on charitable trust;
- The Council cannot treat the land as general Council land; and
- The land must continue to be used for its charitable purposes.

In practice, the recommended approach is to retain the Trusts while strengthening and formalising the Council's management role.

## **7. Closure of the non-Land Trusts**

### **James Elliman Trust**

Closure is feasible but subject to permanent endowment. While the original 1902 governing document does not expressly create permanent endowment, the 1980 Charity Commission Scheme establishes an investment structure whereby capital is retained and income applied. In practice, this operates as permanent endowment. The permanent endowment can be transferred to another charity, but the restriction will continue.

Statutory powers in the Charities Act 2011 could be used to remove the restriction on spending the capital. The test is that the Council will need to demonstrate this is in the best interest of the Trust.

### **Slough Glyndwr Trust**

Closure is possible subject to asset confirmation. If there are only unrestricted funds, then this can be closed and the Charity Commission must be notified.

### **Chalvey Millennium Green Trust**

Complex due to grant conditions and potential ongoing obligations. This will need to be clarified and considered further.

## **8. Recommended Approach**

Short term:

- Progress closure of the James Elliman and Slough Glyndwr Trusts. Consideration of the permanent endowment on the James Elliman Trust will need to be undertaken.

Medium term:

- Investigate the Chalvey Millennium Green obligations.

Long term:

- Review position following Charity Commission engagement, dependent on the option chosen for merging the Trusts.

## **9. Key Risks**

- Legal constraints (land/endowment)
- Incomplete documentation (Baylis trust)
- Charity Commission delays or refusal
- Grant obligations (Chalvey Millenium Green)
- Merger not achieving intended outcomes

## **10. Conclusion**

- A full merger is unlikely to be achievable
- It is not feasible to close all trusts, particularly those holding land
- Closure of certain non-land trusts remains achievable
- The most practical approach is to:
  - Retain the existing trusts; and
  - Continue with coordinated governance and management

## **11. Next Steps**

- 1 Locate governing documents for Baylis War Memorial Garden (not held by the Council or the Charity Commission).
- 2 Complete asset identification exercise.
- 3 Progress closure workstreams (James Elliman and Slough Glyndwr Trusts).
- 4 Develop coordinated governance and management approach.
- 5 Review the Chalvey Millenium Green position (grant obligations and structure).
- 6 Reengage with the Charity Commission where required.