



**Chester-le-Street**  
District Council

**Report to:**

Council

**Date of Meeting:**

27 September 2007

**Report from:**

Joint report of the Director of Development Services and the Head of Legal and Democratic Services

**Title of Report:**

Park View Trust Agreement

**Agenda Item Number:**

**18**

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## **1. PURPOSE AND SUMMARY**

- 1.1 The purpose of this report is to advise members of the Charities Commission and the County Councils proposals to rescind the 1981 Trust Deed Agreement for Park View Community School and have it replaced by a new Constitution, transfer of Control document and funding agreement.
- 1.2 The 1981 Trust Deed Agreement set out a management structure for the Park View facility consisting of a Joint Shared Use Liaison Committee and a Community Association Committee both with district council representation and allowed for the LEA and the district council to have free access to the shared use facility.
- 1.3 Following a review of the facility by the Charities Commission in 2005 it was found that management arrangements had been changed and were not being implemented in accordance with the Trust Deed.
- 1.4 The Charities Commission has since required that the management arrangements be regularized in accordance with the original Trust Deed.
- 1.5 Following discussions by Durham County Council with Park View Community School and Park View Community Association, it is proposed that:-
  - (1) The 1981 Trust Deed is to be brought to an end;
  - (2) Park View Community Association enter into a new trust deed based on its constitution and charitable status;
  - (3) Park View Community School Governors, the Park View Community Association and Durham County Council enter into a Transfer of Control Agreement to document Park View Community Association's use of Park View Community School.

1.6 It is recommended that Provided the representation rights of the district councils and the free access to the shared facilities are retained Members give their support to the proposal for;

(1) The 1981 Trust Deed to be brought to an end;

(2) Park View Community Association to enter into a new trust deed based on its constitution and charitable status;

(3) Park View Community School Governors, the Park View Community Association and Durham County Council enter into a Transfer of Control Agreement to document Park View Community Association's use of Park View Community School.

## **2. CONSULTATION**

2.1 In compiling this report consultation has taken place with the Acting Head of Leisure Services, the Director of Resources and the Head of Legal and Democratic Services

## **3. CORPORATE PLAN AND PRIORITIES**

3.1 This report supports priority 2 working in partnership to deliver the community strategy

## **4. IMPLICATIONS**

### **4.1 Financial**

4.1.1 The District Council's contribution to the scheme amounted to £421,792.85 and was paid in 1979/80 – though some elements may have been in the years immediately before and after that year.

4.1.2 The Trust agreement provides that the Joint Use Liaison Committee and the Community Association Committee shall make no charge to the LEA, the Community Association or the District Council for the use of the shared facilities.

### **4.2 Legal**

4.2.1 Control over the premises is exercised through the instrument of a trust document which is enforceable by the parties to that document. Trustees have a duty to act in the best interests of the trust having regard to the declared objects of that trust.

4.2.2 In the light of this councillors who have been appointed as council representatives in respect of the trust will have interests which conflict with the Council because councillors have to serve the best interests of the general public. Personal and prejudicial interests therefore arise to be declared by councillors who are connected with Park View. In addition, the concept of bias

(actual or perceived) would remove such councilors from deciding whether the Council's interests lie with approving the terms of the new trust control agreement or not.

#### 4.3 Other Services

Staff of the councils Leisure Services Department currently uses the facilities at Park View Community School to host a range of leisure based activities for local residents.

#### 4.4 Diversity

The use of the shared facilities at the Park View Community School under the terms of the agreement is for the purposes of providing educational, recreational and social pursuits for the residents of Chester-le-Streets.

#### 4.6 Risk

The failure to address the mismatch as to de jure and de facto governance arrangements creates a risk of adverse intervention by the Charities Commission and also puts Park View Community School at risk of losing out on funding opportunities due to the confusion over those arrangements which were highlighted by a report from the Charities Commission.

#### 4.7 Data Quality

Every care has been taken in the development of this Report to ensure that the information and data used in its preparation is accurate, timely, consistent and comprehensive. The Council's Data Quality Policy has been complied with in producing this Report.

### **5. BACKGROUND**

5.1 On 5 March 1981 an agreement (the Trust Deed) was made between Durham County Council (the Local Education Authority) and Chester-le-Street District Council regarding the use of Park View Community School.

5.2 The Local Education Authority holds the shared facilities (i.e. the premises, furniture, fixed equipment etc.) on trust to permit the facilities to be used for the purpose of providing educational recreational and social facilities for the residents of Chester-le-Street and the neighbouring areas. Chester-le-Street District Council contributed a total of £421,792 to the scheme. No security was taken in respect of this financial contribution.

5.3 The Trust Deed laid out a governance structure (management structure) of a Joint Shared Use Liaison Committee and a Community Association Committee.

5.4 Membership of the Joint Shared Use Liaison Committee included four nominated councilors from Chester-le-Street District Council and membership of the Community Association Committee included three nominated councilors from Chester-le-Street district Council.

- 5.5 The Trust agreement provided that the Joint Use Liaison Committee and the Community Association Committee would make no charge to the LEA, the Community Association Committee or the District Council for the use of the shared facilities
- 5.6 In the early eighties a separate body known as the Park View Community Association was established and assumed the role of trustee from the Community Association Committee. This meant that the governance structure was not being implemented as initially envisaged.
- 5.7 In 2005 the Charity Commission conducted a review visit to Park View Community School and produced a report which 'expressed a number of concerns, most importantly that whilst the Association is independent in practice this independence is not supported by the existing legal documentation nor does it have any security as to usage of the school premises'.
- 5.8 As a result of its visit the Charity Commission requires the Park View Community Association to take steps to establish its autonomy and obtain an interest in those parts of the School used by Park View Community Association

## **6. PROPOSED WAY FORWARD**

- 6.1 Following discussions by Durham County Council with Park View Community School and Park View Community Association, the proposed solution is:-
- (4) The 1981 Trust Deed is to be brought to an end;
- (5) Park View Community Association enter into a new trust deed based on its constitution and charitable status;
- (6) Park View Community School Governors, the Park View Community Association and Durham County Council enter into a Transfer of Control Agreement to document Park View Community Association's use of Park View Community School.
- 6.2 The County Council is asking Chester-le-Street District Council to consider the proposals and indicate its view.

## **7. RECOMMENDATIONS**

- 7.1 Provided that the representation rights of the district council and the free access to the shared facilities are retained Members give their support to the proposal for;
- (1) The 1981 Trust Deed to be brought to an end;

(4) Park View Community Association to enter into a new trust deed based on its constitution and charitable status;

(5) Park View Community School Governors, the Park View Community Association and Durham County Council enter into a Transfer of Control Agreement to document Park View Community Association's use of Park View Community School.

## **8. BACKGROUND PAPERS / DOCUMENTS REFERRED TO**

8.1 Letters from Durham County Council

<b>AUTHOR NAME</b>	<b>Tony Galloway/Chris Potter</b>
<b>DESIGNATION</b>	<b>Director of Development Services &amp; Head of Legal and Democratic Services</b>
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<b>AUTHOR CONTACT</b>	<b><u><a href="mailto:TonyGalloway@chester-le-street.gov.uk">TonyGalloway@chester-le-street.gov.uk</a></u> Tel: 0191 387 2100</b>
	<b><u><a href="mailto:Chrispotter@chester-le-street.gov.uk">Chrispotter@chester-le-street.gov.uk</a></u> Tel: 0191 387 2011</b>

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