

Brighton & Hove City Council

Urgency Sub-Committee

Agenda Item: 2

Subject: To set out decisions to be made by the Urgency Sub-Committee, on behalf of the Council acting as trustee of the Penny Gobby House School Charity.

Date of Meeting: 18th September 2023

Report of: Executive Director for Families, Children & Learning

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For General Release.

1. Purpose of the report and policy context

1.1 To set out the decisions to be made by the Urgency Sub-Committee, on behalf of the Council acting as trustee of the Penny Gobby House School Charity ('the Charity').

2. Recommendations

That the Urgency Sub-Committee agrees:

2.1 The disposal of 31 Palmeira Avenue, Hove currently occupied by the Jeanne Saunders Centre ('Penny Gobby House') Charity;

2.2 The purchase of the Annexe at Connaught Road by the Charity;

2.3 To delegate authority to the Executive Director Families, Children and Learning to take all steps necessary to progress and complete the disposal of 31 Palmeira Avenue, Hove on behalf of the Charity;

That the Sub Committee notes:

2.4 That further reports will be brought back to the Urgency Sub-Committee to make decisions in relation to the disposal of Penny Gobby House and the acquisition of Connaught Road on behalf of the Charity and to oversee the arrangements for the net surplus proceeds of sale which are to be ringfenced for the Charity's use.

2.5 That a report will be brought to the Strategy, Finance & City Regeneration Committee in due course with a recommendation for the Council as landowner to dispose of the Annex building at Connaught Road, which will be acquired by the Charity.

3. Context and background information

3.1 On 13 September 1979 Ivan Makels and Minni Gobby, the then trustees of the charity known as the Penny Gobby House School, in the name and on behalf of the Official Custodian for Charities transferred the property to East Sussex County Council (ESCC). The property

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formed part of the endowment of the charity known as the Penny Gobby House School and its transfer was authorised by an order of the Charity Commissioners.

- 3.2 Following the local government reorganisation in 1997 the property was transferred from ESCC to Brighton & Hove City Council and the property now vests in the Council in its capacity as sole trustee.

Disposal of Penny Gobby House and Purchase of the Annexe at Connaught Road

- 3.3 The property has for several years not been suitable for the promotion of the Charity's aims. The property is used to provide a specialist nursery providing care and early education for children with SEND in the year before they start school. The Property is a converted residential building over four floors with no lift. Over the years this has created challenges, with many children having to be carried around the building by staff and compliance with disability equality legislation has proven difficult to create disabled access to all parts of the building.
- 3.4 To ensure the future success of the Charity's aims, the proposal is that the Charity disposes of the property on the open market and uses the proceeds of the sale to acquire a property that is owned by the Council and known as the Annexe located at Connaught Road.
- 3.5 Strategy, Finance and City Regeneration Committee has the power to authorise the acquisition and disposal of any land held by the Council and will be asked to consider the disposal of the Annexe at Connaught Road by the Council at a later date.
- 3.6 In the Council's capacity as sole trustee of this Charity, this Urgency Sub-Committee was given authority by the Policy and Resources Committee in January 2023 to consider and authorise the disposal of Penny Gobby House and the subsequent acquisition by the Charity of the Annexe at Connaught Road from the Council.
- 3.7 It is essential that in making and exercising its powers as trustee, the Urgency Sub-Committee act by reference to the Charity's interest alone and not by reference to any other consideration of its interests as local authority.
- 3.8 The Council needs to establish a suitable process for dealing and managing the potential conflict of interest between the Council in its capacity as trustee of the Charity, and its capacity as landowner. All decision-making processes need to be fully documented to show that the Council acted in an appropriate and informed way to manage this conflict of interest. The Urgency Sub-Committee will act on behalf of the Council, in its capacity as sole trustee, and shall only have regard to the interest of the Charity. Members of this Urgency Sub-Committee will not be involved in the decision of the Council as landowner to dispose of the Annexe, and this avoids the same members making decisions on both sides of the proposed transaction.
- 3.9 The legal work to be carried out in relation to the disposal of Penny Gobby House and the acquisition of the Annexe at Connaught Road by the Charity will be dealt with by an external firm of solicitors on behalf of the Charity. The Council's in house legal team will only deal with disposal of the Annexe at Connaught Road on behalf of the Council as landowner.

Ringfencing of Surplus Funds

- 3.10 It is likely that the purchase of the Annexe at Connaught Road will be at a lesser value than the sale of the Property and there will be funds which will need to be protected and spent in accordance with the Charity's objectives, which are "To promote the care, welfare, interest, treatment, education and advancement of young children with Special Educational Needs". It is proposed that recommendations regarding the management of the proceeds, to ensure that the monies are used in furtherance of the Charity's aims, are brought to a future meeting of the Urgency Sub-Committee.

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4. Analysis and consideration of alternative options

4.1 The property has for several years not been suitable for the promotion of the Charity's aims. The property is a converted residential building over four floors with no lift, and compliance with disability equality legislation has proven difficult to create disabled access to all parts of the building.

5. Community Engagement and Consultation

5.1 No consultation or community engagement is required at this stage.

6. Conclusion

6.1 The Urgency Sub-Committee will progress the decisions required, and will report these back to the Strategy, Finance & City Regeneration Committee for information. Once this has taken place, then the Council will be able to move forward with seeking a recommendation to dispose of the Annexe building at Connaught Road.

6.2 The Urgency Sub-Committee is an appropriate and informed way of managing the conflict-of-interest situation.

7. Financial implications

7.1 There are no financial implications arising from this proposal at this stage.

Name of Finance Officer consulted: Steve Williams Date consulted: 6th September 2023

8. Legal implications

8.1 The Articles in the constitution state that each Committee of the Council may appoint an Urgency Sub-Committee to exercise its powers.

8.2 An Urgency Sub-Committee normally consists of the Chair of the main Committee, as well as two other Members nominated by the Group Leader or Leaders as appropriate to meet the requirements for the allocation of seats between Political Groups. However, this is not a strict requirement and in this case is not appropriate as the Council needs to be able to demonstrate that there is no conflict of interest between the members taking decisions on behalf of the Council in its role as the sole charitable trustee and the members who are likely to make the decision on behalf of the Council as landowner to dispose of a council property to the Charity. Therefore, the Members selected to this Urgency Sub-Committee do not sit on the Strategy, Finance and City Regeneration Committee in order to separate out these functions. The Council has sought independent legal advice on behalf of the Charity which confirmed the need for a separation of roles as set out above.

8.3 An Urgency Sub-Committee may exercise the powers of the Committee. Every decision of each Urgency Sub-Committee shall be reported for information to the next ordinary meeting of the relevant Committee, in this case the Strategy, Finance and City Regeneration Committee.

Name of Lawyer consulted: Hannah Bassett Date Consulted: 30th August 2023

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9. Equalities implications

- 9.1 The Council's vision for our children and young people with Special Educational Needs is set out in the Brighton & Hove Special Educational Needs and Disability (SEND) Strategy 2021-2026. The aim is to enhance the outcomes and life chances of young people across the city so that they can achieve the very best they can to lead happy, healthy, and good lives.
- 9.2 The Charity is an outstanding specialist nursery for young children with SEND, offering them the opportunity of being able to access a split curriculum offer to attend a mainstream provision as well as having more specialist support provided by the Charity.
- 9.3 Assessing and supporting needs in Nursery increases the opportunity to enable children to access mainstream school rather than taking a special school path. For those whose needs are picked up early enough, provisions can be put into place to enable children to access mainstream school placements, and for those that require a special school placement they can be supported in having Education Health and Care Plans (EHCPs) put into place to ensure that needs are met via this specialist route.
- 9.4 The Property has areas that are difficult to provide disabled access to, which make it difficult to comply with legislative requirements in respect of disability equality.

10. Sustainability implications

- 10.1 There have always been issues with the Property not being suitable for young children with mobility needs. The property is a converted residential building which is four floors with no lift and many stairs. The property also needs a lot of ongoing maintenance.
- 10.2 The Annexe at Connaught Road offers the space for the development of the provision, the opportunity to increase the cohorts of young people accessing this service and the ability to comply with legislative requirements to offer an enhanced and bespoke environment.

11. Other implications

- 11.1 There are no other implications arising from this proposal.