

From: (Redacted)

Save Maindy Velodrome Campaign Briefing paper ref: SMV/Char1/2022/: 21 March 2022

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**Cardiff Council & its legal responsibilities to the registered charity Maindy Park Trust
– A briefing paper for local councillors, MSs, MPs and others with an interest in the proposed
demolition of Maindy Velodrome –**

Summary

This briefing has been prepared by Redacted the Save Maindy Velodrome (SMV) campaign group to ensure that all relevant information is placed in the public domain and to seek full and proper transparency from Cardiff Council in respect of its responsibilities as the sole trustee of Maindy Park charity (MPC), registered charity 524137.

Cardiff Council as the statutory education authority has published its decision to build a new secondary school for pupils not only in the catchment area of Cathays High School but mostly for those from other areas of across Cardiff. The announcement and subsequent consultation regarding school provision shows the Council using land protected under legal covenant, which forms part of MPC's assets, and restricts its use as set out in the governing document of MPC to: "Recreation or other leisure-time occupation for the benefit of the inhabitants of the City of Cardiff with the object of improving the conditions of life for those inhabitants"

As the sole trustee Cardiff Council is legally responsible for ensuring full compliance with the terms of the covenant and acting wholly and exclusively in the best interests of the charity. Clearly, there is a conflict of interest between Cardiff Council acting as the local authority education provider and acting as the charity trustee. All attempts by SMV to seek transparency on how Cardiff Council is managing this conflict of interest have been ignored and/or rebuffed and so we are calling upon them to temporarily step aside from their role as sole trustee of MPC and instead to ask the Charity Commission to appoint interim trustee/s to oversee this matter.

Charity law & general responsibilities of trustees

The very first direction given to trustees is that they must (ie. it is a legal requirement) "act in your charity's best interests" so it is vital that "you deal with conflicts of interest" (pg3). The consequences of failing to do so are also spelled out clearly:

"Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice." (pg3)

Later on the Charity Commission explains:

"[to] Act in your charity's best interests you must... avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body" (pg5).

And in the detailed section regarding the making of decisions it stipulates that: Save Maindy Velodrome Campaign Briefing paper ref: SMV/Char1/2022/: 21 March 2022

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“When you and your co-trustees make decisions about your charity, you must... act in good faith, and only in the interests of your charity... deal with conflicts of interest and loyalty...”(pg16)

“You should record how you made more significant decisions in case you need to review or explain them in the future.” (pg16).

With regard to recognising conflicts of interest and how to manage them the Commission sets out that:

“If a trustee (or a person connected to a trustee) stands to benefit directly or indirectly, the conflicted trustee(s) should withdraw from the discussion and decision making process.” (pg18).

Source: Charity Commission. Publication CC3, last updated February 2020. “The essential trustee: what you need to know, what you need to do”

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866947/CC3_feb20.pdf

Specific guidance on managing conflicts of interest

Such is the legal importance of managing conflicts of interest that the Charity Commission provides specific and detailed guidance for trustees.

“The Commission sees too many cases of unidentified or poorly handled conflicts of interest, many of which could have been prevented by better trustee awareness and stronger systems. It expects trustees to identify and address effectively any conflicts of interest that affect them or their charity.”(Section 1.2)

The Commission gives the following legal definition of a conflict of interest in charities:

“Conflicts of interest relate to a trustee’s personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person.” (Section 3.1)

They further set out the usual circumstances where conflicts arise:

“Conflicts of interest usually arise where either:

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person
- a trustee’s duty to the charity may compete with a duty or loyalty they owe to another organisation or person” (Section 3.2)

They then give examples of conflicts and the test they would apply to determine if conflicts – real or perceived – arise which may not always be monetary or for an individual’s own benefit, but does include any loyalty to a separate person, body or organisation:

“The test is always that there is a conflict of interest if the trustee’s other interest could, or could be seen to, interfere with the trustee’s ability to decide the issue only in the best interests of the charity. Some conflicts of loyalty arise because a trustee has a competing legal obligation or duty to another organisation or person.” (Section 3.2)

“Serious conflicts of interest include, but are not limited to, those which ...are so acute or extensive that the trustees are unable to make their decisions in the best interests of the charity, or could be seen to be unable to do so” (Section 4.2)

Source: Charity Commission. Publication CC29, published 1 May 2014. “Conflicts of interest: a guide for charity trustees” : Save Maindy Velodrome Campaign Briefing paper ref: SMV/Char1/2022/: 21 March 2022

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>

Legal impact of failing to properly manage conflicts of interest

Where a charity fails to manage a conflict of interest or a conflict of loyalty then there are significant legal consequences:

“Failure to act properly where there is a conflict of interest is a breach of the trustees’ legal responsibilities. A transaction affected by a conflict of interest, where the trustees have not acted properly, could be challenged by the Commission or by an interested party. In some circumstances the transaction may be unsafe and capable of being invalidated or, in the worst case, might be void from the start.

“Where they have not acted properly, trustees may have to repay any sums paid by the charity, whether they result from an unauthorised trustee benefit or another breach of duty. This can be the case, even where the charity has benefitted from the arrangement. If the charity has also suffered a loss, the trustees may have to make good such loss to the charity.” (Section A. Legal consequences)

Source: Charity Commission. Publication CC29, published 1 May 2014. “Conflicts of interest: a guide for charity trustees”

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>

Cardiff Council has compromised its ability to act as the sole trustee of MPT and cannot be considered any longer able to make the decision to allow itself to build a school on land protected under charitable covenant

Cardiff Council issued a consultation document on schools’ provision which stated:

“The construction of new facilities for Cathays High School will take place on the Maindy Centre site and potentially on a proportion of the existing site.” (page 33)

[Source: “21st Century Schools Consultation Document 2021 The Expansion and Redevelopment of Cathays High School”

www.cardiff.gov.uk/ENG/resident/Schools-and-learning/Schools/21st-Century-Schools/Keep-up-to-date-and-contact-us/Publications/cathays-high-school-proposals/Documents/Cathays%20H%20School%20Consultation.pdf

The draft minutes of Cardiff Council’s Children and Young People Scrutiny Committee in October 2021 record that:

“The relocation of the track is essential for the school project to proceed.” (page 11)

[Source: Minutes of remote meeting held on 13 October 2021

<https://cardiff.moderngov.co.uk/documents/g6568/Printed%20minutes%2013th-Oct-2021%2016.30%20Children%20and%20Young%20People%20Scrutiny%20Committee.pdf?T=1>

It is not, therefore, in dispute or in any doubt that it is the intention of Cardiff Council to build a school on land protected by charitable covenant for a purpose that is not legally permitted to be for anything other than recreation and leisure-time occupation.

When the Cabinet approved the decision to build a new school for Cathays on land held on trust under charitable covenant it effectively made any resolution of a conflict of interest impossible while it remained as the sole trustee. No member of the Cabinet can claim to be unconflicted by their decision and neither can any employee or Officer of the Council who is duty bound to implement the decisions of the Cabinet. Save Maindy Velodrome Campaign Briefing paper ref: SMV/Char1/2022/:

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Further, when the Council launched a public consultation on providing a new school showing it built on the covenanted land it showed its hand in respect of the matter.

It is, therefore, impossible for Cardiff Council to make a decision as the sole trustee in the best interests of the charity that so clearly and completely benefits the Council in its guise as the local authority education provider.

The most sensible way forward

Clearly, it is in the best interests of the people of Cardiff that the Council recuse themselves from making a decision on this matter as the sole trustee of the Charity, and that the Charity Commission is requested to appoint an interim trustee or trustees who are genuinely independent of the Council. Without this, Cardiff Council leaves itself open to legal action by the Charity Commission and/or others and, if the Charity is found to have suffered as a result of a failing of Cardiff Council acting as sole trustee, then financial penalties and restitution is the likely outcome, with Cardiff residents ultimately paying the price for the Council failing to heed the early warnings SMV has given them and failing to follow the clear and unequivocal direction readily available from the Charity Commission. Further, provision of a new school will be adversely impacted while legal action is ongoing, with pupils and families suffering uncertainty and delay.

SMV calls upon Cardiff Council to avoid this situation now and ensure that the best interests of Maindy Park charity – and those of Cardiff residents – are protected.

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