

Committee: King George's Fields Charity Board	Date: 15 February, 2012	Classification: Unrestricted	Report No:
Report of: Corporate Director, Communities, Localities & Culture Originating officer: Jill Bell, Head of Legal Services - Environment		Title: Potential Merger of King George's Fields Mile End Charity and King George's Fields Stepney Tredegar Square Charity Wards Affected: All Wards	

1. SUMMARY

This report provides details of the considerations that will need to be undertaken if the King George's Field Mile End and King George's Field Tredegar Square charities are to be merged

2. DECISIONS REQUIRED

King George's Fields Charity Board is recommended to:

- 2.1 Note the explanations of the considerations that need to be undertaken for the potential merger of the King George's Field Mile End and King George's Field Tredegar Square charities
- 2.2 Decide which of the three options outlined in paragraph 3.8 below it wishes to pursue
- 2.3 Instruct officers to approach the Charity Commission seeking their views and then to prepare a detailed report based on the issues outlined in this report
- 2.4 Authorise the mayor to sign the application form for submission to the Charity Commission.

3. BODY OF REPORT

- 3.1 At the previous meeting on 23rd November, the members of the Board asked for a report to be presented concerning the merger of the two charities.
- 3.2 There are two King George's Fields charities, both of which are registered with the Charity Commission:
 - (1) The King George's Field, Mile End charity, registered number 1077859 ("the Mile End charity"); and

- (2) the King George's Field – Stepney (Tredegar Square, Bow) charity, registered number 1088999 (“the Tredegar Square charity”).

The Council is the trustee of both charities pursuant to their governing documents

- 3.3 The King George's Fields Charity Board (“the Board”) is established by section 3.3.12 of the Council's Constitution, which gives the Board the following functions:

3.2.1 To administer the affairs of the King George's Fields Charity and discharge all duties of the Council as sole trustee of the Charity.

3.2.2 To administer the affairs and discharge the duties of trustee of such other charities controlled by the Council as the Cabinet might authorise by resolution.

It would therefore need a resolution of the Council to change these arrangements

- 3.4 It is assumed that the reference in the Constitution to the King George's Fields Charity is to the Mile End Charity. The resolution making the Board responsible for the Tredegar Square charity has not been located. It would be prudent to include in any future report such a resolution to regularise the position, should the Board decide to pursue the application to merge the two charities.
- 3.5 On 17th June 2009 a comprehensive report was presented to the Board regarding the history of the two Charities and their Governing Documents. For ease of reference this is attached at Appendix 1. This document sets out the powers of the trustees and the restrictions on those powers. These have a considerable impact on any potential merger.
- 3.6 Before entering into a merger, the Charity Commission recommend that trustees satisfy themselves that there will be adequate benefits to their users and beneficiaries, which could include:
 - 3.6.1 cost benefits;
 - 3.6.2 improvements to the quality of service; or
 - 3.6.3 the ability to reach a more diverse group of beneficiaries, thus ensuring improved access to the services the charity provides;
 - 3.6.4 more effective use of resources, expertise, knowledge and information;
 - 3.6.5 the ability to direct resources to the areas most in need
 - 3.6.6 avoidance of duplication of effort, achievement of economies of scale and improved access to funding.
 - 3.6.7 Being able to redefine the charities lands. The current plan KGF2 does not reflect the present configuration of Mile End Park. However this will

need a decision from Cabinet to formally transfer the additional land to the merged charity

3.6.8 Another issue which could be regularised would be to add ecology as one of the merged charity's purposes as the work carried out in celebration of the Millennium with the establishment of the ecology park and pavilion has added to the role but has not been formally acknowledged in the documentation.

3.6.9. To seek the additional powers outlined in the 2009 report namely

3.6.9.1 to raise funds, provided that the trustees must not undertake any substantial permanent trading activity and comply with any relevant statutory regulations;

3.6.9.2 to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed, subject to compliance with sections 38 and 39 of the Charities Act 1993 (including the need to obtain proper advice before mortgaging the land);

3.6.9.3 to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;

3.6.9.4 to employ and remunerate such staff as are necessary for carrying out the work of the Charity; and

3.6.9.5 to do any other lawful thing that is necessary or desirable for the achievement of the objects.

3.7 Trustees should also assess the risks involved to ensure that these have been sufficiently addressed. These risks include:

3.7.1 If the two existing charities have the legal powers to merge. The Mile End Charity does not have the power to dissolve the charity and It is doubtful that the Tredegar Square Charity does have such powers so an approach would be needed to the Charity Commission regarding this as only they can grant such powers

3.7.2 The Mile End Charity 2000 Scheme made by the Charity Commission acknowledges a role for the organisation now known as Fields in Trust. This is dealt with in paragraphs 5.1 to 5.3 of the 2009 report at Appendix 1. They would need to be consulted about the proposals and their agreement sought

3.7.3 The railway arches are on lease from Network Rail. Their consent to the assignment to the new merged charity would be needed

3.7.4 The costs involved in the work necessary to achieve this merger. As well as the professional fees involved there will be the costs of the Charity Commission and Land Registry to take into account

3.8 The actual process of a merger between charities will depend on the legal structures involved and the powers contained in each of the charities' governing documents. The merger will usually take one of the following forms:

Option A - The two charities combine their assets and resources by transferring them all to a new charity established with purposes similar to those of the original charities. What can or can't be done will depend on either:

- what the governing documents of the charities concerned allow in terms of bringing the charities to an end, what must be done with their property and how the decision is to be made ('the dissolution clause') In practice neither Charity has such a power ; or
- where there is no 'dissolution clause' or similar, an analysis of what the purposes of the charities are and how their property may be used. Broadly speaking, the objects must be similar enough to ensure that those who currently benefit from the charities will continue to do so after the merger. It will also be important to check for any restrictions on how the property of the charity can be used as this will have an effect on how the merger is brought into play.

Option B - One of the charities could dissolve and transfer their assets to an existing recipient charity.

Option C - Two or more charities are grouped together, with one charity (or its trustees) becoming the trustee body of the other charity or charities involved. This is not strictly speaking a merger as there continue to be two or more separate charities In these cases trustees must be clear when they make decisions for a specific charity in the 'group' that they are acting in the interests of that charity rather than any other charity of which they also happen to be the trustees. This would be done under section 74D of the Charities Act 1993. The Charity Commission has in the past advised that it can make a "uniting direction", pursuant to which the charities will be linked for the purposes of registration and accounting. According to the Charity Commission, charities subject to a "uniting direction" remain legally distinct, and the trustees remain under a duty to ensure that funds for each charity are applied only for the separate purposes of those charities. This is in effect a regularisation of the current arrangement.

3.9 If the Board were minded to go ahead with the merger the following information would need to be provided to the Charity Commission

- The structure of each charity that is involved
- The purposes of each charity involved
- What powers each charity has available to achieve a merger
- Confirmation that any charity transferring assets has the powers it needs, for example a power of dissolution

- Whether the charity receiving assets have the powers it needs, for example if it can act as a trustee
- What property is to be transferred
- Whether any of the charity's property is held as permanent endowment or on other special trusts that might prevent it from being mixed together with the assets of any recipient charity

3.10 It is clear from the 2009 report that the Tregedar Square Charity has limited powers and the position of Fields in Trust as Trustees of "the Foundation" which provided the purchase moneys for most of the Mile End Charity land are complicating factors. This means that the Charity Commission will need to be involved in any merger and they will set the powers of the merged or new charity. There will also be costs involved in this work and the Board need to weigh up the benefits of a merger with these costs. The costs can be a legitimate expense of the charities but in real terms the Council will bear the costs as it subsidizes the running costs of the Charities

3.11 The Charity Commission have recommended Trustees consider the following issues when exploring a merger proposal:

- 3.11.1 whether the merger will be in the best interests of the charity's beneficiaries;
- 3.11.2 ensuring all legal issues have been addressed and that the process complies with the charity's governing document;
- 3.11.3 an assessment of the risks attached to the proposed merger, including any operational and reputational risks;
- 3.11.4 other factors that can impact on a merger including:
 - 3.11.4.1 the need for good communications, both internal and external;
 - 3.11.4.2 filling key roles eg chair, chief executive, and board members;
 - 3.11.4.3 the importance of deciding on an appropriate name, brand and identity for any new charity;
 - 3.11.4.4.1 engaging with and managing expectations of people and organisations that have an interest in the merger;
 - 3.11.4.5 the need to negotiate with existing funders at an early stage;
 - 3.11.4.6 any impact on the ability to fundraise;

- 3.11.4.6.1 dealing with agencies that may need to be approached eg HM Revenue and Customs if the new merger will affect the charity's tax or trading arrangements.
- 3.11.4.7 dealing with the Land Registry if land or property is being transferred from one organisation to another and the resulting fees and expenses
- 3.12 It is suggested that if the Board wish to pursue the merger a report is commissioned dealing with the following key issues:-:
 - 3.12.1.1 reasons for the merger;
 - 3.12.1.2 potential benefits; and
 - 3.12.1.3 potential obstacles.
 - 3.12.1.4 an initial feasibility study, cost-benefit analysis and risk assessment;
 - 3.12.1.5 legal , property and accountancy analysis by advisers;
 - 3.12.1.6 advice from or discussion with the Charity Commission if there are problems with powers or other legal issues are identified;
 - 3.12.1.7 a formal due diligence exercise (this can be carried out in-house or by the charities' respective auditors or other professional advisers).and

This report will then be presented to the Board seeking a formal decision by each Charity to proceed with merger. A copy of the Charity Commission checklist. is attached at Appendix 2

4. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 4.1 There are no specific financial issues to raise at this point but there will be substantial work to be done on the financial implications if the Board decide to go ahead with the proposed merger
- 4.2 Any costs arising from proceeding with one of the options identified in this report will be met from the Mile End Park budget. Neither Charity has its own financial resources and all costs fall to be met from the General Fund, to the extent that they are not met from income from external bodies and individuals, or from Council services. It is therefore important that the Council maintains adequate financial control."

5. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 5.1 The legal issues which will need to be addressed are contained in the body of the report but in summary they are:-
 - 5.1.1 examination of the two Charities documents to determine the available/required powers;
 - 5.1.2 property issues eg assignment of leases, transfer of title;
 - 5.1.3 contractual issues;

- 5.1.4 consideration of the rules for appointing trustees to the newly merged body;
- 5.1.5 the nature of the assets, eg permanent endowment and the rights of Fields in Trust
- 5.2 If the Board were minded to proceed with the merger following receipt of the report the next steps would be (providing the issues raised in this report could be resolved)
 - 5.2.1 a recommendation to the Cabinet that the merger application to the Charity Commission be pursued and the property transfers authorised
 - 5.2.2 then Cabinet recommending to Council the application to the Charity Commission and alteration to the Council's constitution

6. APPENDICES

Appendix 1 – Report to King Georges Trust Board 17th June 2009
 Appendix 2 – Advice Note from Charity Commission on Mergers

**Local Government Act, 1972 Section 100D (As amended)
 List of “Background Papers” used in the preparation of this report**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
They are appended	N/A