

Charity Trustee Sub-Committee

Meeting held 25 October 2022

**PRESENT:** Councillors Bryan Lodge (Chair), Richard Williams (Deputy Chair), Douglas Johnson (Group Spokesperson), Julie Grocutt and Mick Rooney

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**1. APOLOGIES FOR ABSENCE**

1.1 There were no apologies for absence.

**2. EXCLUSION OF PRESS AND PUBLIC**

2.1 It was noted that appendix 1 to item 6 on the agenda is not available to the public or press because it contains exempt information. If Members wish to discuss the information in the appendix, the Committee will ask the members of the public and press to kindly leave for that part of the meeting and the webcast will be paused.

**3. DECLARATIONS OF INTEREST**

3.1 There were no declarations of interest made.

**4. PUBLIC QUESTIONS AND PETITIONS**

4.1 Andy Kershaw attended the meeting and asked the following questions:

Please explain how the council discharges its statutory duty as sole corporate trustee of Graves Park? Answer: The Council is a Corporate Trustee. It has chosen to delegate its responsibilities as Trustee to the Charity Trustee Sub-Committee. The Members of that Committee exercise those responsibilities jointly, with decisions being carried by a majority. Each Member is not a trustee in their own right.

Please explain how the funding revenue generated in Graves park has been applied and why The Rose Garden Cafe has not benefitted from any repairs or maintenance for the last 10-20 years and who is responsible for this neglect? Answer: Revenue generated within Graves Park has been spent within the park. This has been on maintenance and management of the green space. The Council is responsible for maintaining the structure and external elements of the Rose Garden Café. Repairs and maintenance have taken place at Rose Garden Café when issues have been reported by the occupants and Council staff. Whilst the previous condition report in 2018 highlighted that the roof was in a poor state of repair, the recommendation was considered, but no action was taken. A further survey did not then take place until the most recent ones in 2022. Further information to supplement this response (including financial information) will be provided in writing.

Will the committee support the full repair and reinstatement of the Rose Garden

café in accordance with the wishes of the 10,500 people who have signed the petition calling for it to be re-opened ? Answer: We do appreciate the strength of feeling regarding the future of the Rose Garden café. However, as Trustee the Council must act in the charity's best interests and manage its resources responsibly and, as a Committee of the Council, the Charity Trustee Sub-Committee must make decisions on the basis of all of the relevant information. It is currently too early in the process for the Committee to be able to do those things and so it is not possible, at this time, for the Committee to give its support to one particular option.

Will the council reveal the precise details of the funding model for Graves Park and exactly which staff are accounted for in the account of expenditure submitted to the charity commission? Answer: Sheffield City Council is the sole trustee of the Charity. Funding relating to the charity is either restricted or unrestricted. Unrestricted funds are available for use at the discretion of Trustees, in furtherance of the general objectives of the charity. This largely relates to income from activities at the park. Restricted funds are those to be issued in accordance with specific restrictions by donors or which have been raised by the charity for a specific purpose. Any deficit arising between expenditure and funding each year is met by Sheffield City Council. Further information to supplement this response (including financial information) will be provided in writing.

Will the committee support a recommendation for a scheme change to the Graves Park charity to enable local ward councillors and local stakeholder representatives to become trustees of Graves Park? Answer: We are committed to engaging with the public and we want to ensure that the public voice is taken into account in how our parks are managed. However, a change of the kind proposed would not be straight-forward. It would involve individuals being willing to be trustees in their own right, with the personal responsibility/liability that arises from that. There would also be implications for the Council's corporate trusteeship, which would in all likelihood need to be delegated to an officer to facilitate decision making alongside the other trustees, and there would be practical implications in terms of the support/advice that could be made available to the new trustees by Council officers. I have however asked officers to investigate what options are available to us within the committee structure to support local councillors and stakeholders to be more formally involved.

How does the Council square its duty to care for and maintain the charitable assets of Graves park in the light of the finding of fact in question 2. Answer: The Council has a duty to care for Graves Park in its entirety, including the Rose Garden Café building and all of the green space. All of the revenue budget generated from within Graves Park has been spent within the park. Whilst some minor repairs and maintenance have taken place on the Rose Garden Café building, the large majority of expenditure has been on maintenance and management of the green space. The Council makes a considerable grant contribution each year to support the charity. It is clear from the accounts that there was not sufficient funding within the charity (even taking Sheffield City Council's contribution in to account) to undertake the level of capital works required on the building. Any decisions in terms of large-scale investment in the building would have required additional funding either from the Council, or another

source.

Which parks across the city are run by trustees with the sole trustee as the council? Given the huge value of our parks to communities across the city, extremely committed 'friends' groups and other stakeholders, the stated commitment to communities in Sheffield, and the importance of accountability and local involvement, how is it ever possible, justifiable or desirable that those 'making decisions about our parks consist of only you and exclude all others? Will you rapidly review and rectify this situation in light of this council's stated policy positions and commitments? Answer: The following sites are charity sites (with Sheffield City Council as the sole trustee):

Blackamoor  
Charnock Green  
Chelsea Park  
Earl Marshall Recreation Ground  
Endcliffe Park Firth Park  
Glen Howe Park  
Graves Park  
High Hazels  
Hillsborough Park  
Norfolk Park  
Phillimore Park  
Richmond  
Ripon St  
Sutherland Rd  
Weston Park  
Wincobank

The local community and relevant groups (including Friends Groups) are involved in planning within our parks sites and are consulted on activities within the parks. Decisions are then taken in Council meetings (formally Cabinet and Co-Operative Executive meetings, now Charity Subcommittee meetings) as required. The response to the earlier question on trustees explains the complexity and legal complications of amending this charity model.

4.2 Caroline Dewar attended the meeting and asked the following questions:

The report refers to the 2009 Scheme regarding Graves Park. Are the trustees aware that this scheme is in addition to the original conveyances of 1925, 1931 and 1936 and does not replace or over-ride them? Answer: The 2009 Scheme specifically states that it does replace the former trusts of the charity. There may be requirements in the original conveyances that do still apply but not those that are the former trusts of the charity

Have the trustees replied to the Charity Commission's letter on pages 25 and 26 of the report and if so, what was their response regarding the charitable land that is currently still waiting to be restored to parkland? The Friends assume that this land is the old Norton Nurseries site, two parts of which are already restored (by Friends of Graves Park) and open to the public. The Friends have been waiting for permission to start the next section for the past 7 years. The Friends already have a scheme for this work and have already agreed to fund the restoration. Can you

give us a time scale of when that permission will be forthcoming? Answer: The letter from the Charity Commission forms part of the report being discussed at the Charity Subcommittee. The response to the Charity Commission will be discussed as part of this meeting therefore no response has yet been sent. As per previous correspondence with Parks and Countryside regarding the 'Norton Nursery' area of Graves Park, at the present time, we cannot allow the extension of the arboretum into the Norton Nursery of the park area as SCC needs this area to run operations for Graves Park and the local area. The council is continuing to look for alternative solutions to all its operational depot facilities and Norton Nurseries is being considered in this review. The council has given a commitment that when we can progress this issue, we will, but for now, we need this area to service Graves Park. We have not said that this area is no longer part of the park and we have not designated it as something else.

Since our last correspondence with the Charity Commission, the Council has now published a notice that they intend to sell the freehold on Bole Hill Farm, which was sold in 1982, contrary to the original conveyance of 1925. When did the Trustees discuss this sale and when was the decision made to sell this land? Please note that land in the Graves Park Trust has no power of sale and is designated charitable land. Was the decision incorrectly delegated to council officers and if so when did this happen? Has the council contacted the Charity Commission about this yet to seek advice? Answer: With regard to why the Council believes that the disposal of the freehold does not require a decision from the relevant committee the answer to that question is that there is no decision to be made, this being a disposal that the Council must by law complete. The current freehold disposal is a consequence of the decisions made in 1982 and 1994, not a new decision. Regarding the original decision to sell Bole Hill Farm, a report was submitted to the Recreation Committee on 13/09/1979 and the minutes of that meeting give the authority to dispose. The Charity Commission was consulted and confirmed authority to dispose in correspondence dated 4th December 1980.

4.3 Ruth Hubbard submitted the following question which was read out by the Chair:

Please can I ask you to confirm which parks across the city are run by trustees with the council as sole trustee. (It includes most or all of our big parks doesn't it?) Given the huge importance of parks to citizen and community wellbeing, extremely committed 'friends' groups and other stakeholders (who all have expertise and experience), the stated commitment to 'people first' and communities having meaningful influence, council claims that it is significantly changing the ways it works, and the errors that this council appears to be making and the serious constraints the council continues to work with .....how is it ever possible, justifiable or desirable that those making decisions about our parks include only you, and exclude all others? You also claim as a council to have 'learnt the lessons' from the street tree debacle and I am pretty sure that the Independent Street Tree Inquiry will, amongst other things, highlight the serious risks of seeking to exclude, and the considerable benefits from, joint oversight and management of vital community assets. So, will you rapidly review and rectify this situation in light of this council's stated policy positions and commitments to ensure that the management and oversight of our parks benefits from much better governance arrangements that fully include the significant contributions that a

range of appropriate others can bring - as trustees (or equivalent, depending on structures adopted)? Answer: The following sites are charity sites (with Sheffield City Council as the sole trustee):

Blackamoor  
Charnock Green  
Chelsea Park  
Earl Marshall Recreation Ground  
Endcliffe Park Firth Park  
Glen Howe Park  
Graves Park  
High Hazels  
Hillsborough Park  
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Phillimore Park  
Richmond  
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Sutherland Rd  
Weston Park  
Wincobank

The local community and relevant groups (including Friends Groups) are involved in planning within our parks sites and are consulted on activities within the parks. Decisions are then taken in Council meetings (formally Cabinet and Co-Operative Executive meetings, now Charity Subcommittee meetings) as required. The response to the earlier question on trustees explains the complexity and legal complications of amending this charity model and sets out our commitment to look at options.

## **5. ROSE GARDEN CAFÉ BUILDING, GRAVES PARK UPDATE AND NEXT STEPS**

- 5.1 The Executive Director, Operational Services submitted a report setting out to brief the Charity Trustee Sub-Committee on the current position regarding the Rose Garden Café Building (“the Café Building”) at Graves Park, following its closure on 27th July 2022. The report contains an update as to decisions and actions taken to date. It also sets out the proposed next steps and seeks approval for those steps to be taken alongside a request to approach the Charity Commission regarding the potential options for the Café Building.

Members debated the current position in detail and reiterated the apologies for the sudden closure of the café and the impact this has had, particularly for employees of the cafe. Members discussed details of the nature of the lease for the café and how the current position had been arrived at and officers agreed to provide Members with details in writing.

- 5.2 **RESOLVED UNANIMOUSLY:** That the Charity Trustee Sub-Committee:-

(1) Subject to recommendation 2 below that the sub-committee acting as trustees agree that at this time the options proposed in this report in

relation to the future of the Café Building at Graves Park are the only reasonable options available to the trustees acting in the charity's best interests;

(2) That in all the circumstances, before any final decision is made by the trustees regarding the future of the Café Building, pursuant to clause 10 of the Scheme and section 110 of the Charities Act 2011, the Charity Commission is approached for guidance on the options set out in this report;

(3) That following receipt of the opinion of the Charity Commission and any clarification required, a further report is brought back to the Sub-Committee for consideration of the future of the Café Building; and

(4) That the Executive Director, Operational Services, in consultation with the Chair, Deputy Chair and Group Spokesperson, be authorised to respond to the recent letter received from the Charity Commission regarding the Trust land and the closure of the Rose Garden Café Building.

### **5.3 Reasons for Decision**

5.3.1 It is imperative that any decisions taken by the Council as trustees of the charity are made in accordance with the Scheme. As stated in the report there is both provision within the Scheme itself under clause 10 and pursuant to section 110 of the Charities Act 2011 for trustees to put questions to the Charity Commission and more particularly decide the question of what proposals are within or without the terms of the Scheme. It is therefore prudent to make those enquiries before the trustees make any definite decisions regarding the Café Building

### **5.4 Alternatives Considered and Rejected**

5.4.1 No alternative options have been considered at this stage as the closure of the building was in response to significant potential Health and safety issues. Information continues to be gathered in order that informed decisions can be made at future stages of the process.