



Strategic Support Services: Legal Services

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Sent by email only to
Laura Wainwright
Case Manager – Regulatory Compliance

RCCorres1@charitycommission.gov.uk

Your Reference: LAW/C-036009/RC
Our Reference: David Sellars

Date: 19 July 2024

Dear Ms Wainwright

Further to your letter of 27 June 2024 and our subsequent email exchanges please see below the position regarding the matters raised therein.

Disposal of the Tennis Courts

Please see attached:

1. Copy report pursuant to s119(1) of the Charities Act 2011 (please note this appendix contain confidential information which was not provided in the public version of the report). This information is therefore not to be shared.
2. Please see attached the minutes of the Charity Sub Committee dated 5 June 2023.

3. Please see attached the notices published in accordance with section 121(2)(b) of the CA 2011 dated 3 August 2023. With regard to the objections received pursuant to those notices the charity sub-committee considered those at a meeting on 15 September 2023. A copy of the report to the Charity Sub Committee, a list of objections and the minutes are attached.
4. The tennis court facilities are accessible to the general public. There is no requirement to enter into a membership agreement or contract of any form. The fees remain the same as have been charged previously and are set out below.

With regards to Casual Court Hire the proposed fees are for non-loyalty card holders £6:00 per hour for adults and £3:00 per hour for juniors. For loyalty card holders it is £4:20 per hour for adults and £2:10 per hour for juniors. With regards to Coaching the fees for non-loyalty card holders is £5:00 per hour for adults and £3:50 per hour for juniors. For loyalty card holders it is £4:00 per hour for adults and £2:80 per hour for juniors.

5. Minutes of Charity Sub Committee dated 5 June 2023 are attached as per point 2.
6. There was no independent legal advice sought regarding this matter. Advice was sought regarding the Norton Nurseries and the principles under Rye and Rye. If you explain why you wish to see the advice the request will be considered.
7. Section 6 of the Trustees of Land and Appointment of Trustees Act 1996.
8. The land to be disposed of is currently used as tennis courts which is consistent with the objects of the 2009 Scheme and this use will continue.
9. The lease agreement will be granted by the Council as trustee and will be reflected in the wording of the lease agreement. With regard to the income that will be allocated to the Graves Park trust, this information is contained in Appendix 4 – Financial Summary (please note this appendix contain confidential information which was not provided in the public version of the report). This information is therefore not to be shared.

No income is generated directly by the lease. The income is generated through the commercial agreement entered into with the operator. The operator remains responsible for the maintenance of the tennis courts under the terms of the lease agreement.

Norton Nurseries

The Trustee notes the Commission's comments regarding matters since 2017 and can only repeat that the lack of progress since 2017 was not a deliberate avoidance of what is required but rather due to long term absence of the persons dealing with this for the Council and other matters such as Lockdown caused by the Covid 19 Pandemic and it continues to be the case that the Trustee recognises the need to regularise the situation. There has never been any intention of the Trustee to dispose of the land in question to a connected party without the consent of the Commission. To be clear, there has been no disposal, and the land remains in the ownership and control of the Trustee. Several options to regularise have been considered and if the preferred option required consent to dispose from the Commission, it would have been sought. The charity will obtain independent valuation evidence regarding what is a reasonable licence fee. If so advised the Council will also obtain its own valuation advice. _

10. The trustee has considered the request from the Friends of Graves Park but unfortunately the land is currently in use operationally and is needed by the Charity to maintain the Park.
11. As previously advised the Council is not aware of when exactly the land began combined use as operational land by the Council and the trustee. It is believed that the use did pre- date 2009 Scheme.
12. As previously advised the arrangement in practical terms works satisfactorily for both the charity and the Council and the Trustee are not aware of any conflicts of interest that have arisen since 2009 as no decision has been made since that date, so as far as the Trustee are aware there are no minutes of any decisions by the Trustee regarding the operational use of the depot land. The charity does not own any plant or equipment of its own for the maintenance and upkeep of the park. The provision of the space by the charity to store Council equipment is compensated for by the Charity not having to invest in the provision and maintenance of equipment and the cost of Council officer time to use and maintain the equipment.
13. Graves Park is approx. 90.27 hectares in area and the Norton Nurseries operational area comprises approx. 1.93 hectares. This equates to Norton Nurseries operational area representing around 2.14% of the entirety of the Graves Park charitable land. The Council use is incidental to the use for the charity as the amount of land that would be required were it possible to separate the uses would be the same. The entire 2.14% is used to support the day-to-day management and maintenance of the Charity. Of the use of the land (for machine storage, staff welfare, the machinery turning circle, refuse collection), we have estimated that 60% of the time these elements are supporting Graves Park and 40% of

the time the elements are supporting other green spaces. The use of this land therefore supports the charity being able to carry out its charitable objects. A photograph that shows the Nurseries in relation to the whole of Graves Park is attached.

14. There has been no independent valuation undertaken regarding what is a reasonable licence fee for the Council to pay to the Charity. This will be undertaken as part of the regularisation of the shared use and occupation of the site.
15. The preliminary view is that given the land and plant and equipment is shared that it would be problematic to establish exclusive possession of any part of the land. It is therefore considered that the use and occupation by the Council by way of a licence would be appropriate. This would also provide the necessary flexibility for each party to end the agreement should the need arise. There is currently no written agreement in place and the licence is implied by practice.
16. Whilst the Norton Nurseries land is used operationally to service both graves Park and other nearby green spaces, no alternative use of the land can be considered.
17. Decisions are made in accordance with the Council's delegations set out in its constitution. As sole trustee the Full Council provides the appropriate delegations. Save to the extent a trustee decision may fall with the matters that it has generally reserved to itself, Full Council has not reserved any trustee certain matters to itself. It has delegated (and reserved) to the Charity Trustee Sub-Committee (which is a sub-committee of its Strategy and Resources Policy Committee) certain decisions as trustee, all other decisions as trustee are delegated to officers.

The matters delegated and reserved to the Charity Trustee Sub-Committee as set out in the Council's constitution are 'The Charity Trustee Sub-Committee shall take all decisions of the Council as charitable trustee, including but not limited to

- Disposals of and other dealings with charitable land
- Matters about which the Charity Commission must be contacted
- Matters of which charitable trustees should be aware in accordance with Charity Commission Guidance
- Use of charitable assets by the Council for purposes that do not directly meet the charitable aims
- Any other matter that has a significant impact on the use of a charitable asset for the charitable purposes for reasons of duration, area of the asset impacted, or other restriction, including that permission may be granted or withdrawn for the regular or exclusive use of an area of charitable land for recreational, business or other purposes by a single person or organisation

- Matters relating to land that is not itself charitable and other incidental matters which depend on or are directly related to a decision that must be made by the Charity Trustee Sub-Committee

To the extent that a day-to-day decision would fall within the above, then it would be made by the Sub-Committee, otherwise it would be an officer decision. The trustee believes this is in line with paragraph 3.6 'Delegation and the role of staff and sub-committees', of the Charity Commissions Guidance 'It's your decision: charity trustees and decision making'.

Further Information Required

18, 19 and 20

The benefit to the Charity is more than just the improvement of its facilities. The object of the charity is the provision and maintenance of a park and recreation ground for the use by the public with the object of improving their conditions of life. Re-opening the glass houses (which account for 0.33% of the Graves Park and Norton Nurseries area) for food growing would contribute to outcomes within Sheffield's Food Strategy: Fairer, Healthier, Greener – A Food Strategy for Sheffield which compliment and further the objects of the Trust.

Please find attached the minutes of the meeting and decision record as requested.

Yours sincerely

SHEFFIELD CITY COUNCIL

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