



Report to Policy Committee

Author/Lead Officer of Report: Ruth Bell, Head of Parks and Countryside

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Report of: *Ajman Ali, Executive Director – Operational Services*

Report to: *Charitable Trusts Subcommittee*

Date of Decision: *25th October 2022*

Subject: *Rose Garden Café Building, Graves Park Update and Next Steps*

Has an Equality Impact Assessment (EIA) been undertaken?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>				
Has appropriate consultation taken place?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Has a Climate Impact Assessment (CIA) been undertaken?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Does the report contain confidential or exempt information?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-				
<i>The appendix 1 is not for publication because it contains exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).</i>				

Purpose of Report:

This report sets out to brief the Trustees of the Graves Park Charity on the current position regarding the Rose Garden Café Building (“the Café Building”) following its closure on 27th July 2022. It contains an update as to decisions and actions taken to date. It 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.

Recommendations:

Recommendations

- (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 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 subcommittee for consideration of the future of the Café Building.

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: <i>Janinne Scarborough</i>
		Legal: <i>David Sellars</i>
		Equalities & Consultation: <i>Louise Nunn</i>
		Climate: <i>Victoria Penman</i>
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	SLB member who approved submission:	<i>Ajman Ali</i>
3	Committee Chair consulted:	<i>Bryan Lodge</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Committee by the SLB member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	

Lead Officer Name: <i>Ruth Bell</i>	Job Title: <i>Head of Parks and Countryside</i>
Date: <i>17th October 2022</i>	

1.	PROPOSAL
1.1	<u>Background</u>
	<p>The Rose Garden Café (Café Building) was closed on 27th July 2022 following health and safety risks being identified as a result of a structural survey report.</p> <p>Having considered the evidence in the structural reports, there being discussion with the structural engineer, the opinion from insurers been sought, the time it would take to add a propping solution being considered and potential risks to the health and safety of any occupants of the Cafe Building, the decision was taken by officers to close the café on the 27th July with immediate effect, to ensure the safety of staff and members of public whilst further investigations and discussions could take place.</p> <p>Officers assessed a temporary propping solution to keep the building open and discussed the operational implications with the operator of the cafe on the 28th July. Whilst propping is possible, officers and café representatives agreed at this stage that it was not viable to operate a café under these circumstances.</p> <p>The toilet block that adjoins the Cafe Building was constructed separately to the café. This structure has been assessed and determined to be unaffected by the issues of the main structure. This building therefore remains open. The toilets are accessed via a side entrance and are separated from the rest of the site by Heras Fencing.</p>
1.2	<u>History of the Park</u>
	<p>In 1925 Land purchased by Councillor and Mrs. J.G. Graves was presented to the Corporation as a gift to the City of Sheffield, for use as a public park. In 1927 an addition was made to the park through the construction of the Pavilion (which would later change its name to Rose Garden Café). Between 1925 and 1936 the park significantly increased in size from 154 to 248 acres. And in 1938 the construction of the Rose Garden in front of the Pavilion (later the Rose Garden Café).</p> <p>Graves Park is Sheffield's largest park and is a flagship site providing recreational and health benefits to a wider range of communities across Sheffield. The Park is held in a Charitable Trust with Sheffield City Council acting as the sole trustee. Key facilities at the park include the animal farm attraction, two playgrounds, sporting facilities and the Rose Garden Café. The café is a well-used facility and provides t contributes towards the cost of running, maintaining and improving the Park. The facility links through the rose garden to the park's largest playground. There are two active Friends Groups within the park (the Friends of Graves Park and the Friends of Woodseats Playground).</p>

1.3	<p><u>Charitable Status</u></p> <p><u>The Graves Park Scheme – Charity Commission Reference (510841) (“the Scheme”)</u></p> <p>The pursuant to the powers in the Charities Act 1993 the Charity Commission set up the Scheme from the 12th March 2009 to govern the charity known as Graves Park (510841) and replaced the former trusts of the charity.</p> <p>The objects of the charity are:-</p> <p><i>“The provision and maintenance of a park and recreation ground for use by the public with the object of improving their conditions of life.”</i></p> <p><i>“Subject to clause 7 below, the land identified in part 1 of the schedule to this scheme must be retained by the trustee for the use of the object of the charity.”</i></p> <p>At Clause 10 the Scheme provides :-</p> <p>10. QUESTIONS RELATING TO THE SCHEME</p> <p><i>The Commission may decide any question put to it concerning:</i></p> <p style="padding-left: 40px;"><i>(1) The interpretation of this scheme;</i></p> <p style="padding-left: 40px;"><i>(2) The propriety or validity of anything done or intended to be done under it.</i></p> <p>The Council is the sole trustee of the Graves Park charity and produce audited accounts and submit them to the Charity Commission. No annual general meetings are held. When decisions are required related to the charity site, they are taken by the relevant elected member-led group (currently Charitable Trustees Subcommittee of the Council, previously Cooperative Executive and prior to this Cabinet).</p>
1.4	<p><u>Charity Finances</u></p> <p>The charity accounts have been prepared on a going concern basis. The 2021/22 Accounts are currently being prepared and are not ready for sharing with the Committee until later this year post external audit review.</p> <p>In 2020/21, total revenue expenditure on charitable activities was £475k, £287k (60%) was funded by Sheffield City Council. The remaining revenue funding sources largely relate to other income from activities such as rents, car parking, and income from the animal farm, though it should be noted that most activities at the park during the year 2020/21 were curtailed as a result of the pandemic. Individual</p>

	<p>rents are commercially sensitive but the total rental income for the Park is detailed in the charity accounts.</p> <p>In addition, a further £261k capital expenditure was incurred, fully funded by the Council, which has enhanced the Parks staff welfare facilities, and enabled road, path and pitch repairs</p> <p>Total overall expenditure (both capital and revenue) was therefore £736k, funded as follows:</p> <ul style="list-style-type: none"> -Sheffield City Council revenue contribution £287k -Sheffield City Council Capital contribution £261k -Income from other activities: £177k -Friends of/Other: £11k <p>As the charity is managed and funded by the Council no specific charity reserves are deemed to be necessary, except for those reserves represented by fixed assets.</p>
1.5	<u>Building Maintenance and Surveys</u>
	<p>As part of the Council’s rolling condition collection programme to help prioritise investment decisions, condition surveys were undertaken at the Café Building in October 2018 and July 2022. These were visual surveys that detailed the condition of building elements and indicated where further survey work might be required.</p> <p>The condition surveys in 2018 and 2022 undertaken by Rider Levitt Bucknall, were produced as part of the Council’s cyclical programme of reviews. They identified issues with bowing and distortion of the structural frame which could be seen both in the roof structure which is sagging and the front elevation which is leaning out. The 2022 survey highlights the roof had deteriorated since the 2018 survey due to water ingress and the building was classed as poor overall (requiring remedial works) and the roof was classed as bad (reached the end of its life).</p> <p>Extract from Condition Survey July 2022 <i>The original Rose Garden Cafe has a plain tile roof, which is in poor condition with numerous missing and damaged tiles. The timber facias are deteriorating and the clock tower requires further investigation and restoration. The windows are similarly deteriorating with replacement of decayed units required. The timber framed structure forming the Rose Garden Cafe has been subject to historic and significant distortion. The café has been subject to longstanding water ingress issues. The water ingress has potentially damaged the timber structure. Specialist third-party specialists should be engaged to inspect the condition of the timber structure. Whilst no evidence of recent instability was apparent, prior to recovering the main roof, further investigation required by Structural Engineer to ensure all movement is complete.</i></p>

	<p>Separately and unrelated to the rolling condition collection programme, the Parks & Countryside Service commissioned Capital Delivery Service to undertake a Feasibility Study to explore how the building could be improved to support a better café offer. As part of this study, the structure of the building was inspected by a SCC structural engineer on the 20th June 2022 and a report was issued to the council on the 13th July 2022.</p> <p>This was a visual inspection of the café which identified blocked drains, roof sag to both elevations, that the dormer windows leaning backwards both sides, that there were roof leaks in various locations, that the gutters were in a poor condition, that the clock tower was leaning backwards, and that all the window frames were rotten and the window frames to the front elevation were leaning outwards.</p> <p>Following this appraisal, which raised concerns about the structural stability of the building, verbal questions were asked of the structural engineer regarding carrying out an inspection of the timber trusses to confirm if the building is safe to occupy. From the discussion it was noted that an additional roof survey would be difficult to carry out safely without closing the café (due to the need to prop each truss and create a walkway in the roof space which would itself add weight to a structure) and would likely require some renovation to make the areas safe for inspection. It was concluded at this point that an inspection of the roof space would be expensive to carry out safely and would only confirm what the visual inspection and report had concluded i.e. that the timbers are rotten and need replacing which is evidenced by the bowing and distortion both in the roof structure which is sagging and the front elevation which is leaning out meaning the building was not safe to continue to occupy. The structural engineer produced a report on the 3rd August which reflected the discussion on the 27th July.</p> <p>An independent structural survey was carried out on the 4th August which confirmed a number of the issues with the structural integrity of the building and agreed with the recommendation to close the building on safety grounds.</p> <p>No planned investment works were instructed for the Cafe Building following the 2018 survey, but a cyclical condition survey was instructed to be carried out in 2022. However, servicing, day to day repairs and maintenance were carried out as required.</p> <p>All survey reports are published on https://www.sheffield.gov.uk/parks-sport-recreation/rose-garden-cafe-closure</p>
1.6	<u>Current Position</u>
	<p>The building remains closed. A propping design has been agreed to permit safe access to the building. The primary purpose of the propping is to permit further detailed survey work to be undertaken to understand the extent of the issues, the options available to resolve those issues and any costs associated with those resolutions.</p>

	<p>Early conversations have been held with the café operator BrewKitchen about their views on operating within the propped building. Based entirely on indicative designs they are keen to explore the option of operating but further visualisations and site visits once the building has been propped will be required to understand whether a café operation is feasible.</p> <p>Given the extent of the survey work that is required it is currently suggested that café operations could not recommence before the beginning of December.</p>
1.7	<p><u>Decision Phases</u></p> <p>There are assumed to be at least three phases to the decision-making required around the closure of and structural issues within the Rose Garden Café.</p> <p>This first phase , concerned with the immediate decision regarding any replacement refreshment facility within the park. For this decision, options were collated, costed and assessed. This decision was an officer-based decision (via Executive Director of Operational Services) in consultation with the Chairs of the Finance Subcommittee. This decision was taken on 10th August 2022. Please note this decision may be superseded by the ability to reopen the existing café building under the propping.</p> <p>A secondary phase (which will be interlinked with the third phase) will look at the viability of the existing structure, any ongoing safety issues, costs and feasibility of options and make recommendations. This decision will consider refurbishment or demolition (or any other alternatives). This decision will likely be taken by the Charities Subcommittee. This briefing is not presenting or reviewing these options – that information is being gathered and will be presented at the appropriate point. No decisions have been taken on this by anyone at this point.</p> <p>The third phase will look at future options for a café (and / or wider) provision within the park. It will include consultation with the local (and city) population on potential facilities, funding and opportunities. This will be required whatever the outcome of the second phase of decisions. This decision will likely be taken by the Charities Subcommittee or by the Finance Subcommittee (depending on capital / revenue implications). This briefing is not presenting or reviewing these options – that information will be gathered and will be presented at the appropriate point. No decisions have been taken on this by anyone at this point.</p>
1.8	<p><u>Potential Options</u></p> <p>A full options appraisal will be undertaken following the complete set of surveys being produced setting out any and all issues with the</p>

	<p>building's structure. It is currently anticipated that the options are likely to include:</p> <ol style="list-style-type: none"> 1. Do nothing – ensure members of the public are kept safely away from the building through secure fencing but make no repairs to the building 2. Structural stabilisation of the existing building (and refurbishment) 3. Demolition of the existing building and provision of a modular facility in its place 4. Demolition of the existing building and provision of a traditional build facility in its place 5. Demolition of the existing building and site clearance only
1.9	<p><u>Charity Commission Guidance</u></p> <p>Paragraph 10 of the Scheme says as follows:</p> <p><u>Questions Relating to the Scheme</u></p> <p>The Commission may decide any question put to it concerning:</p> <ol style="list-style-type: none"> (1) the interpretation of this scheme; or (2) the propriety or validity of anything done or intended to be done under it. <p>Officers consider that in the circumstances it would be prudent to put the options set out in this report to the Commission in order to make certain that any actions proposed to be undertaken fall within the terms of the Scheme. The Charities Act 2011 section 110 also contains similar provisions which would be referred to as “belt and braces” for the Charity Commission correspondence.</p> <p>The Charity Commission have recently written to the Trustees of the Graves Park Charity regarding the Trust land and the closure of the Rose Garden Café Building. The letter is contained at Appendix 2.</p>
1.10	<p><u>Café Operator</u></p> <p>The café was operated on a commercial basis by Brewkitchen Ltd. At the time of closure Brewkitchen Ltd had a Tenancy at Will (“TAW”) to run a café within the Café Building. Previously the café was leased to Red Holdings Limited for a term up to and including the 31st December 2021. The lease was contracted out of ss24 to 28 of the Landlord and Tenant Act 1954 and so the tenant had no security of tenure after the lease ended on 31st December 2021. At that point, as vacant possession was not required by the council, Brewkitchen Limited (a company associated with Red Holdings) was granted the TAW . The terms of the TAW were to be the same as the 2020 lease to Red Holdings insofar as the terms were consistent with a TAW (including the fact that either party can end the TAW without notice or without a</p>

	<p>reason). Further information regarding the Tenancy at Will is contained at Appendix 1 (Confidential).</p> <p>The Council has been in regular contact with the operator since the closure of the café on the basis of working with a Director of the company to assess options for a temporary refreshment provision in Graves Park. The company was offered the opportunity to run a café cart or something similar or take a temporary container space. The operator has stated that they wish to understand the results of the coming structural surveys and associated H&S assessments before making a decision on temporary provision within the park.</p>
2.	HOW DOES THIS DECISION CONTRIBUTE ?
2.1	A high-quality café facility within a park setting contributes to the customer experience of that park. It permits people to stay longer in that outdoor setting, enjoy it in all weathers, has the potential to improve the wellbeing of visitors and build a stronger local community and neighbourhood.
3.	HAS THERE BEEN ANY CONSULTATION?
3.1	<p>Details around the closure including all surveys and a link to FOI responses, have been issued via the new web page Rose Garden Cafe Closure Sheffield City Council. This page is updated as significant developments take place.</p> <p>There has been a significant online response to the closure of the café and that the Café Building is considered structurally unsafe. This includes:</p> <ul style="list-style-type: none"> • A petition supporting a proposal to ‘make the Council repair not demolish the Rose Garden Café’ • A JustGiving page (originally created to raise funds for improvements to the Rose Garden Café building) • A number of public meetings have been arranged by local people around the ‘Save the Rose Garden Café Campaign’ • Local Councillors and MPs have been in touch (predominantly to the Council’s Parks and Countryside department) regarding the closure of the Café Building • Local Councillors have reported significant contact from the public regarding this matter • The Council has been contacted by local media (including The Star and BBC Radio Sheffield) • The ‘Save the Rose Garden Café Campaign’ and Friends of Graves Park have attended local meetings <p>There appears to be a mix of views with some focus on the loss of a café / refreshment facility within the park and some focus on the building itself and some forming a combination of the two.</p>

	<p>A consultation process is being planned. Early conversations have been held with the 'Save the Rose Garden Café Campaign' and Friends of Graves Park about sharing information and designing questions together. The consultation is likely to be multi-stage and will need to capture both local resident's views as well as those from across the city given Graves Park's designation as a city attraction. It is vital that the views of the broad range of park and café users and other stakeholders are captured.</p> <p>It is recognised that throughout this process we assure people that openness and honesty are important to us, and we will be transparent in our dealings with this matter and publish as much information on our website as possible.</p> <ul style="list-style-type: none"> • The Web page will provide transparency and be used to sign post interested parties to relevant information and published documents. • The Web page information will be grouped under common themes, as raised by the public and we will give access to all the reports that have been produced in relation to the building condition and structural information. • Links to related websites and council decisions will also be made available.
4.	RISK ANALYSIS AND IMPLICATIONS OF THE DECISION
4.1	<u>Equality Implications</u>
4.1.1	There are none at this stage due to the closure of the Café being down to structural issues.
4.2	<u>Financial and Commercial Implications</u>
4.2.1	At this stage the financial implications of the issues are not known. Future reports will set out this information to allow decisions to be taken.
4.3	<u>Legal Implications</u>
4.3.1	<p>The Trustees should at all times act in the best interests of the Charity.</p> <p>Graves Park is held by the Council on a charitable trust which is governed by the 2009 Scheme.</p> <p>The objects of the charity under the Scheme are:- <i>"The provision and maintenance of a park and recreation ground for use by the public with the object of improving their conditions of life."</i></p>

	<p><i>“..... the land identified in part 1 of the schedule to this scheme must be retained by the trustee for the use of the object of the charity”</i></p> <p>Section 6 of the Trusts of Land and Appointment of Trustees Act 1996 (TLTA) provides:</p> <p>(1) For the purposes of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner.</p> <p>(6) The powers conferred by this section shall not be exercised in contravention of, or any order made in pursuance of, any other enactment or any rule of law or equity.</p> <p>(7) The reference in subsection (6) to an order includes an order of any court or the Charity Commission.</p> <p>“Land” also includes buildings and therefore the café falls within how land can be dealt with under the Scheme or statute.</p> <p>At Clause 10 the Scheme provides</p> <p><i>10. QUESTIONS RELATING TO THE SCHEME</i> <i>The Commission may decide any question put to it concerning:</i></p> <p><i>(1) The interpretation of this scheme;</i></p> <p><i>(2) The propriety or validity of anything done or intended to be done under it.</i></p> <p>Section 110 of the Charities Act 2011 also provides that</p> <p>(1) The Commission may, on the written application of any charity trustee ..., give the applicant its opinion or advice in relation to any matter</p> <p>(a) Relating to the performance of any duties of the applicant, as such a trustee, in relation to the charity concerned, or</p> <p>(b) Otherwise relating to the proper administration of the charity.</p> <p>(2) A person...who-</p> <p>(b)acts in accordance with any opinion or advice given by the Commission under subsection (1) is to be treated...as having acted in accordance with [the] trust</p>
4.4	<u>Climate Implications</u>
4.4.1	There are no climate implications at this stage.

5.	ALTERNATIVE OPTIONS CONSIDERED
5.1	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.
6.	REASONS FOR RECOMMENDATIONS
6.1	It is imperative that any decisions taken by the Council as trustees of the charity are made in accordance with the Scheme. As stated above 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

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