



## Report to Policy Committee

### Author/Lead Officer of Report:

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**Report of:** *Ruth Bell, Head of Parks & Countryside*

**Report to:** *Charity Trustee Sub-Committee*

**Date of Decision:** *21 March 2024*

**Subject:** *Rose Garden Café lease*

Type of Equality Impact Assessment (EIA) undertaken	Initial <input checked="" type="checkbox"/>	Full <input type="checkbox"/>
Insert EIA reference number and attach EIA	2384	
Has appropriate consultation/engagement taken place?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Has a Climate Impact Assessment (CIA) been undertaken?	Yes <input checked="" type="checkbox"/>	No <input 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:-		
Appendices 1 and 3 are not for publication because they contain exempt information under Paragraphs 1 and 3 of Schedule 12A of the Local Government Act 1972 (as amended).		

### Purpose of Report:

1. Seeks the approval of the Charity Trustee Sub Committee acting as Charity Trustee of Graves Park (Registered Charity Number 510841) (“the Charity”) to the grant of a Tenancy at Will (“TAW”) in respect of the Rose Garden Café (“the Property” as further defined at paragraph 1.3 of this report and referred to in the plan attached hereto) to Julie Collins (“the Tenant”) on the terms set out in the Appendices to this report after consideration of the contents of the Designated Adviser’s Report and satisfying itself that the proposed terms are the best that can be reasonably obtained by the Charity in the circumstances.
2. Sets out the requirements that need to be met prior to this letting (as detailed in the Legal Implications section of this report).

**Recommendations:**

The Charity Trustee Sub-Committee is asked to:

1. On consideration of the commercial terms and the Designated Adviser's Report (set out in attached Appendices), confirm that the Trustees are satisfied that the proposed terms are the best that can be reasonably obtained by the Charity in the circumstances.
2. Approve the TAW of the Property to the proposed Tenant based on the terms set out in this report.

Lead Officer to complete:-		
	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.	Finance: <i>Jonny McQuillin</i>
		Legal: <i>Leonie Wallace and Tarmina Saville</i>
		Equalities & Consultation: <i>Ed Sexton</i>
		Climate: Consultation at a future date
	<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	<b>SLB member who approved submission:</b>	<i>Ruth Bell, Head of Parks &amp; Countryside</i>
3	<b>Committee Chair consulted:</b>	<i>Councillor Ian Auckland</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.	
	<b>Lead Officer Name:</b> Alison Turner-Mills	<b>Job Title:</b> Senior Estates Surveyor
	<b>Date:</b> <i>21 March 2024</i>	

# 1. PROPOSAL

## ***Background***

### 1.1 Project timeline summary

An initial site visit by the design team in May 2022 identified structural and safety concerns and the café was temporarily closed on the 27 July 2022. Propping of the building through significant internal and external scaffolding was installed to mitigate any risk of structural failure and to satisfy the Council's insurers enabling the café to reopen w/c 19 December 2022 with significantly reduced seating capacity.

Following Charity Sub-Committee approval in October 2022, a feasibility study was commissioned which presented 5 design options with associated feasibility cost estimates based on the commissioned surveys. The options were further appraised to understand viability and how each of the options met the charity objectives. Many factors were considered including community value, funding sources and delivery options. The appraisal highlighted that some of the design options were either unviable (primarily due to funding limitations or delivery challenges) or did not meet the project objectives.

The October 2023 committee report recommended that the options with a limited works or replacement building approach be paused and a restoration approach pursued.

Please also refer to the Charity Trustee Sub-Committee reports dated [25 October 2022](#) and [18 October 2023](#) for further project context.

### 1.2 Charitable Status

As per the previous report, pursuant to the powers in the Charities Act 1993, the Charity Commission authorised a Scheme dated 12th March 2009 to govern the charity known as Graves Park (Charity Number 510841) which replaced the former trusts of the charity.

The main object of the charity as set out in the Scheme is as follows:-

“The provision and maintenance of a park and recreation ground for use by the public with the object of improving their conditions of life.”

The Council, as the charity's Trustee, must act in accordance with the Scheme.

### 1.3 Graves Park is registered at HM Land Registry with the part comprising the Property registered under title number SYK610763. This is the northern edge of the park and is shown edged red on the copy title plan attached to this report. The Property lies within a section of Graves Park that was acquired to be held in trust by the Council under a Conveyance dated 12<sup>th</sup> December 1925.

1.3.1 The Property is located within the northern part of Graves Park and is shown on the attached copy title plan edged blue. The Park itself lies approximately 3 miles southwest of Sheffield City Centre in the Norton / Woodseats area of the city and can be reached from the outer ring road via Norton Lane and Hemsworth Road. Vehicular access to the area of Graves Park within which the Property is located is gained from the Hemsworth Road / Bunting Nook junction through the Park gates.

Overlooking the formal rose garden, the Property comprises a large café and a side extension incorporating public toilet facilities. Due to structural issues identified in 2022, the Property is heavily propped internally and externally, therefore currently the service available is restricted to that of a takeaway.

1.3.2 At present the Property is occupied by BrewKitchen (“the Operator”) under a Tenancy at Will agreement dated 15<sup>th</sup> December 2022. In recent months discussions have taken place with the Operator who intends to vacate the Property as soon as possible, stating it no longer fits with their overall business aims. As the Operator occupies by way of a Tenancy at Will, they may leave immediately without notice, however, in the interests of the staff and users of the Property and the wider Park, they are prepared to work towards achieving a seamless transfer to a new operator if this can be done within a reasonable timeframe.

With the need for a quick turnaround to ensure the Property’s services remain open to the public and to avoid the potential of having a vacant building with its associated costs, negotiations have commenced with Julie Collins, a current member of the cafe staff, who also runs Norfolk Park Café and is a member of the Save the Rose Garden Café Campaign and active representative of the Rose Garden Café Partnership attending meetings.

1.3.3 Terms have been provisionally agreed with Julie Collins, for a Tenancy at Will on the same terms as the existing tenancy, to commence immediately upon termination of the existing agreement to BrewKitchen. The proposed terms of this agreement are set out under Appendix 3.

1.3.4 It is believed this arrangement will have the following benefits;

- a. Ensures continuity of service to the users of Graves Park.
- b. A direct transfer of staff between the current and proposed tenant will avoid job losses.
- c. Ensures security of the building, instead of having a vacant property whilst undertaking marketing to re-let.
- d. Brings in a modest income to the charity.
- e. Operation of the adjoining public WC’s would not require additional resource from the Council (the tenant of the café currently opens and closes these facilities).
- f. The proposed tenant is fully aware of the issues surrounding the property and is a member of the Rose Garden Café Partnership.
- g. The proposed tenant is a member of the existing staff and therefore understands the limitations of the current business operation and is aware

that there is no guarantee they will be given a more substantial agreement once plans for the building are developed.

- h. The proposed tenant has a proven track record of running another Council park café, where rental payment is up to date and positive feedback from users has been received.
- i. There is a cost saving to the charity as the need to advertise for a new operator would not be required.

## **2. HOW DOES THIS DECISION CONTRIBUTE?**

- 2.1 The provision of a café in the park is seen as fulfilling the objects, since it provides facilities for recreational and leisure time in a place where the public can socialise and take refreshments as part of the overall park experience.

The proposed disposal more particularly contributes to the provision and maintenance of the park as follows:

- (a) it will generate rental income which will be retained by the Charity and used for the purposes of the objects of the Charity;
- (b) it will maintain the provision of the take-away café facility within the park for use by the public.

- 2.2 The provision of a café, community space, facilities and public toilets in the park aligns with the objectives of the Better Parks Initiative.

Better Parks is the Councils Parks & Countryside approach, which was approved by Cabinet in 2018. It seeks to sustain and improve our parks and green spaces by increasing commercial interest and income. Its vision is to deliver better services for Sheffield's parks and green spaces by growing economically viable ventures. For example, more and better catering opportunities, increased social value initiatives through complementary sponsorship and new franchises. The overall approach at Graves Park meets these criteria allowing investment and regeneration:

- Affordable public access
- Addressing inequalities and promoting activity and participation in our most deprived communities
- The Council maintaining policy and asset control
- Improving quality across all our facilities in all areas of the city
- Seeking and supporting partnerships that are aligned with the Council's priorities and values
- Ensuring potential partners are viable and sustainable.

## **3. HAS THERE BEEN ANY CONSULTATION?**

- 3.1 As there will be no material change to the existing provision of facilities within the park there is no requirement for or benefit to holding a public consultation, officers have however gathered informal feedback from local Councillors.

- 3.2 The Rose Garden Café Partnership is currently designing and undertaking a consultation as detailed in the March 4<sup>th</sup> Committee Report and approved by the Charity Trustee Sub-Committee on October 18<sup>th</sup> 2023.
- 3.3 We know from previous consultation how important catering and toilet facilities can be for people wanting to enjoy parks, green spaces and woodlands. In a 2018 survey focused on facility improvements in parks and woodlands, 64% of those asked said that they would use café facilities within their local park.
- 3.4 In 2021/22 the Parks & Countryside service carried out a Customer Satisfaction Survey which was designed around customer use and experience across our sites. The survey gave people the opportunity to feedback on the park, woodland or green space they visited most often. Of those asked, 63% said they thought the café facilities at our sites were good or very good, 16% thought the café facilities were not very good or poor, the remaining 21% didn't express an opinion about café provision.

## **4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

### **4.1 Equality Implications**

- 4.1.1 The objects of the Charity are to provide the park and its facilities to all members of the public without restriction to or distinction between any person's characteristics including, but not limited to the protected characteristics identified and therefore there are no equality implications to be considered in the decision requested by this report on the proposed disposal.
- 4.1.2 Overall, this proposal will have a positive impact that will continue to benefit users of Graves Park and wider community.
- 4.1.3 The provision of a café is important to making green spaces more widely accessible, and consequently should encourage social interaction, visitors to stay longer in the outdoors, bring new users to the park and increase opportunities for the community connections needed to get people more active hence promoting health and wellbeing.
- 4.1.4 In terms of the Council's obligations under the Equality Act 2010 and organisational policy commitments, the café's continued availability would be seen as encouraging use of the park for people sharing a range of different protected characteristics and equality interests. These include Age (younger and older people), Disability, Health, Carers, Cohesion and the Voluntary, Community & Faith Sector.
- 4.1.5 There are no negative impacts identified.

### **4.2 Financial and Commercial Implications**

- 4.2.1 The proposed TAW will maintain the current rental income for the Charity provided by the current arrangement. All rental income generated by the TAW

will be retained by the Charity and used for the purpose of the Charity in accordance with its charitable objects.

- 4.2.2 If the TAW did not proceed, then the Charity would lose out on rental income and there would be additional costs of securing a vacant building and arranging for opening and closing of the public toilets.
- 4.2.3 Further financial information is contained in the Designated Adviser's Report at Appendix 1 to this report.

### **4.3 Legal Implications**

- 4.3.1 The Property lies within a section of the park that was acquired by the Council under a Conveyance dated 12<sup>th</sup> December 1925 and held on trust by the Council for the charitable objects set out above.
- 4.3.2 The proposal is to grant a tenancy at will of the Property while further proposals are developed for its future. This gives the parties flexibility as this can be terminated without notice by either party although in reality it is usual practice to end the tenancy and then allow a period for the tenant to make arrangements to leave the premises in the condition as agreed. This allows both parties an element of flexibility that a lease would not normally do and is an accepted mode of tenure where the future use and occupation by the current tenant is definitely clear.
- 4.3.3 The Charities Act 2011 contains certain restrictions on disposition, but as the proposed grant of a tenancy at will is not classed as a disposition under the terms of the legislation, there is no requirement to obtain any specific authorisation from the Charity Commission or to comply with the restrictions on any disposition contained in the relevant provisions of the Charities Act 2011.
- 4.3.4 The Council, as trustee, is under a general obligation to act in the best interests of the charity and to achieve the best price that can be reasonably obtained on any disposal. The running of the cafe in Graves Park is within the objects of the charity. This proposal, which secures the future running of the cafe, has to be considered to be in the best interests of the charity.

## **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 Two alternative options were considered and discounted. The first option was to close the café, which at this time would be inconsistent with previous decisions of this committee and is clearly not what the users of the park want based on the ongoing work with the Rose Garden Café Partnership. The second option considered was a competitive tender for a new operator. This option would lead to a pause in service and the property vacant for a period of time, leading to income loss, additional costs and public disappointment. In addition, the limitations of the existing building only able to provide a takeaway service may not be attractive to operators. We also do not know what the impacts of the restoration and refurbishment will be so it is not appropriate to enter in to a long term arrangement at this point.

## 6. REASONS FOR RECOMMENDATIONS

The proposal to grant a Tenancy at Will on the same terms as the existing tenancy for the café:

- Safeguards the café facility at Graves Park for the short term and avoids vacant building costs and unwanted antisocial behaviour.
- Secures the income stream by way of a modest rent.
- Allows continuity of service and staff, providing the take-away café facility within the park for use by the public.
- Enables the property to continue to be occupied for the purposes of the charitable objects of the Charity.
- Complies with the statutory provisions contained within the Act and further with the requirements of the Charity Commission.

Appendix 1 **Designated Advisor's Report**

Appendix 2 **Plan**

Appendix 3 **Terms of Tenancy at Will (TAW)**