

Charity Trustee Sub-Committee Decision Report

Title of Report:	Licence for use of Norton Nurseries as an operational base for Parks and Countryside
Date of Decision:	25 th November 2024
Report To:	Charity Trustee Sub-Committee
Report Of:	Ajman Ali, Executive Director – Neighbourhoods
Report Author:	Ruth Bell, Head of Parks and Countryside

Executive Summary: This report outlines a proposal to grant a licence to Sheffield City Council for its Parks and Countryside Service to continue using part of the Norton Nurseries area of Graves Park as an operational base for the management and maintenance of green spaces outside of Graves Park. This use is in addition to, and ancillary to, the use of the same piece of land for the management and maintenance of Graves Park which is permitted by the charity's scheme. This report seeks approval from Sheffield City Council, acting as sole trustee of Graves Park Charity, to agree to a 12-month licence of the area to allow the Council's ancillary use.

Name of charity and (if registered) charity number: Graves Park (Registered Charity number 510841)

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



Committee remit: This report is to be considered by the Charity Trustee Sub-Committee as its remit includes:

The Charity Trustee Sub Committee shall take all decisions of the council's 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for reasons of duration, area of the asset impacted, or other restriction, including that permission may be granted or withdrawn for the regular or excessive use of an area of charitable land for recreational, business or other purposes by a single person or organisation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 trustees subcommittee

Does the report contain confidential or exempt information? Yes

Appendices A and B to this report are not for publication because they contain exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).

Recommendations:

The Charity Trustee Sub-Committee is recommended to:

1. Note the contents of this report and annexures.
2. Approve the terms of licence proposal to regularise the ancillary arrangements in Graves Park.
3. Confirm that the necessary processes in relation to transactions with connected persons have been complied with and that subject to the Charity Commission consent confirming the Licence can be entered into with the Council.

Financial Implications: Yes – Approved by Adran Hart

Legal Implications: Yes – Approved by David Sellars

Equality and Inclusion Implications: No – Approved by Ed Sexton

Initial Equalities Impact Assessment completed with EIA number 2891

Climate Change Implications: No

Background Papers: None

Appendices:

Appendix A – SCC valuation - closed

Appendix B – Charity valuation - closed

Appendix C – Draft licence

1. Background

- 1.1 Graves Park is held on charitable trust by the Charity and administered by Sheffield City Council as sole trustee, with this committee acting as sole corporate Charity Trustee. Management is provided by Parks and Countryside Services. The charitable trust is registered with the Charity Commission as Graves Park (Charity Registration Number 510841).
- 1.2 The object of the charity is the provision and maintenance of a park and recreation ground for use by the public with the object of improving their conditions of life.
- 1.3 The council has for several years been engaged in correspondence with the Charity Commission regarding several matters concerning the Graves Park Charity which included the provision of an operational base for the maintenance of the park itself (which is permitted) and the ancillary use as an operational base for the maintenance of other green sites.
- 1.4 The Charity Commission has over the years inquired regarding how the council is using the land at Norton Nurseries and what steps have been taken to regularise the ancillary arrangements. It was in principle agreed that the Council would subject to approval take a lease of the land that is in ancillary use, but the lease was not progressed. The Charity Commission has advised that because the council has not regularised these arrangements, the trustee has been acting in breach of the trust and that the current position cannot continue.

2. Proposal

- 2.1 While work is undertaken to fully understand the requirements of an operational base (or multiple bases) to continue to deliver green space management and maintenance, it is proposed that as an interim measure a licence is granted to Sheffield City Council for a period of 12 months to continue the ancillary use in Graves Park.
- 2.2 The licence would require Sheffield City Council to pay a rental fee to the Graves Park Charity for the use of the Norton Nurseries for the support of sites other than Graves Park. In turn the Council will be able to re charge the charity for the use of the Council's staff and equipment to deliver the necessary maintenance to Graves Park. The mechanism for the licence fee and re charging are set out in detail in the draft licence.
- 2.3 As the Council is the sole trustee of the charity it is for the purposes of the Charities Act 2011 deemed to be a connected person. Because of this and to ensure that there is no conflict of interest the charity and the Council have been separately represented in respect of the negotiations of the terms of the licence including the valuation of what

is a fair licence fee. In the case of the charity, it was considered prudent that it should be represented by an independent third party and after a tender process was undertaken, Fowler Sandford were appointed to act on behalf of the charity. The Council was represented by Council officers who are experienced in providing valuations. The valuations for each respective party are attached at Appendices A and B and a rental fee together with the terms and conditions of the Licence that both sets of professional officers consider to be fair has, subject to the approval of this committee, been agreed.

- 2.4 The proposed licence is included at Appendix C. This draft licence has been sent to the Charity Commission together with an explanation of what processes have been put in place to ensure against any conflicts of interest arising. If the Commission is satisfied that the processes are sufficient then it will order that the Licence can be completed.

3. How does this decision contribute to the objects of the charity?

- 3.1 Entering into the licence agreement will regularise the commercial relationship between the Charity and the Council. By doing this it will end the breach of trust and provide the charity with a source of income.
- 3.2 In order to deliver the objects of the Charity it is necessary to maintain and manage its green space. This requires the use of plant, equipment and staff which the charity does not have. To securely house plant and equipment and provide appropriate welfare facilities for the green space teams an operational base is needed. The Norton Nurseries operational base facilitates the maintenance of not only Graves Park but other local green spaces.
- 3.3 This arrangement in practical and commercial terms works well for both the charity and the Council. The charity does not own any plant or equipment of its own for the maintenance and upkeep of the park and does not have the resources to acquire this. 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. In turn the Council has the use of a site that logistically fits well with the delivery of its services in both Graves Park and other green sites.

4. What community or partner engagement has been undertaken and how has it informed the proposal?

- 4.1 No specific engagement has been undertaken regarding this proposal. The requirements to proceed with this proposal have been set out in

correspondence with the Charity Commission. In that correspondence, the trustee agreed that it would keep the Commission and other interested parties informed of developments and where necessary work with the Commission to ensure that any decision is made in accordance with the relevant laws and regulations and all necessary orders were obtained.

5. What alternative options did we consider?

Alternative Option 1:

Do Nothing

This option was rejected as to do so would mean that the trustee was acting in breach of trust .

Alternative Option 2:

Propose a licence for longer than 12 months

This was rejected as the work that is ongoing to establish what the options are for the operational base to support the management and maintenance of green spaces including Graves Park should be concluded within 12 months.

Alternative Option 3:

Remove the operational base from Norton Nurseries immediately

This was rejected as it is not logistically possible for the charity. An operational base to support the management and maintenance of green spaces including Graves Park is a key requirement for delivery and there are no suitable alternatives available to allow an immediate decanting from Norton Nurseries.

6. How has equality, diversity and inclusion been actively considered?

- 6.1 The proposal is a maintenance of the status quo for the next 12 months. In continuing to provide an operational base for the continued maintenance and management of Graves Park the proposal identified within this report is expected to have positive equality of opportunity impacts. The green space will remain safe, welcoming, and accessible for those who use it.

7. Financial and Commercial Implications

- 7.1 Norton Nurseries is used approximately 60% for servicing Graves Park charity and approximately 40% for servicing non charitable green spaces. On this basis, negotiations between Sheffield City Council and Fowler Sandford (on behalf of the Graves Park Charity) have agreed a rental figure of £60,000 per annum.

- 7.2 The proposal is that Sheffield City Council pay the full rent under the licence to the Graves Park Charity and then recharge the charity a sum to reflect this additional cost of providing the services to the charity. The cost will be within existing resources.
- 7.3 The Charity Commission has been informed that the Charity receives an annual subsidy by way of grant from the Council (which includes an element for use and occupation of the operational land that is used for council purposes). The funding is subject to considerations of the entire green spaces estate across the city and has been reduced in previous years due to reducing revenue funding being available to Parks and Countryside. The payment of a licence fee from Sheffield City Council to the Graves Park Charity provides a confirmed income stream for up to 12 months for the Graves Park Charity which provides an amount of resilience against any further reductions in the grant.

8. Legal Implications

- 8.1 The issuing of a licence for 12 months to the Council is not a disposition for the purposes of sections 117 to 121 of the Charities Act 2011. This is because the entering into a licence with the Council does not create an interest in land.
- 8.2 However, even though it is not a disposition because the licence is being entered into with the Council which is also the charity trustee pursuant to section 118 of the CA 2011 the Council is treated as a connected party. The possibility of a conflict of interest that arises because of the connection means that the charity needs to be independently represented and also obtain an order from the Commission allowing it to enter into the licence.

9. Climate and Environmental Implications

- 9.1 There are no climate or environmental implications arising from this report.

10. Other implications

- 10.1 There are no other implications arising from this report.

11. Reasons for decision

- 11.1 It has been confirmed by the Charity Commission that the trustee is acting in breach of trust and therefore if the arrangement is to continue it must be regulated, in order to remedy the breach. This is a matter that must therefore be rectified, and the arrangements regularised in a way that benefits the Graves Park Charity.

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