



Report to Policy Committee

Author/Lead Officer of Report: Tammy Whitaker, Head of Property Services

Tel: 27 34700

Report of: *Kate Martin*

Report to: *Finance Committee*

Date of Decision: *1st August 2023*

Subject: *Lease of land at Millhouses Park, Sheffield*

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>) awaiting				
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>"Appendix 1 is not for publication because it contains exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended)."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:

(Outline the decision being sought or proposal being recommended for approval.)

This report seeks the approval by Finance Committee to the following proposals:

1. to grant a new lease of the Property to True North Brew on the terms set out in the Appendices to this report.

Recommendations:

That Finance Committee approve the lease of the subject property to the new tenant based on the terms set out in this report

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>Kerry Darlow</i>
		Legal: <i>David Sellars</i>
		Equalities & Consultation: <i>Ed Sexton</i>
		Climate: <i>Kathryn Warrington</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>Kate Martin</i>
3	Committee Chair consulted:	<i>Cllr Zahira Naz</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>Tammy Whitaker</i>	Job Title: <i>Head of Property Services</i>
Date: <i>24/07/2023</i>		

1. PROPOSAL

- 1.1 Millhouses Park is registered at HM Land Registry under title no: SYK629700 and is shown shaded pink on the location plan attached to this report (Appendix 2).
- 1.2 The subject property comprises a rectangular area of land adjacent to the Wagon and Horses Public House (W&H) and forms part of Millhouses Park and is shown edged red on the site plan (Appendix 2)
- 1.3 The property is used by True North Brew, the operator of the W&H, as an external area in conjunction with the public house business. To date occupation of the subject property has been regulated by a series of agreements, the latest being a Tenancy at Will (TAW) dated 14th April 2022. In parallel, negotiations over a formal lease have been ongoing. These have been protracted and complicated but in principle Heads of Terms have now been agreed
- 1.4 The resulting proposed terms of the new lease are set out in Appendix 1.

1.5 *Background*

- 1.5.1 The original idea of an external seating area on the subject property was first raised by the previous operator of the Wagon and Horses but it was not until 2017, after the current owner True North Brew (TNB) took over the pub, that discussions were developed and plans for an external seating area were submitted to SCC for consideration. The original plans for the external seating area showed a landscaped area with outside tables in the style of a beer garden. Around the same time, some informal discussions took place around an agreement to use the land.
- 1.5.2 A planning application by TNB for 'use of adjacent park land as external trading area for Public House including provision of seating area, siting of container unit for use as servery and provision of additional access to site from Millhouses Park and associated works was submitted in May 2020 and planning consent granted by SCC in its capacity as Local Planning Authority in February 2021.
- 1.5.3 The planning drawings showed a small building on the site that was referred to as a 'container server' and described as 'a serving counter for customers seated within the area and created from an upcycled shipping container'. This was understood to facilitate the serving/delivery of pub food to externally seated customers.
- 1.5.4 At this point terms were agreed with TNB. These arrangements were based on the provision of an outdoor seating area with a small servery. Complete details on those lease terms can be found in Appendix 1. In addition to these terms a verbal agreement was made by TNB to put a piece of accessible play equipment in the playground. This was in accordance with public commitments to do so made over the years (including in the petition at Appendix 4). Subsequently TNB have referred to this commitment as being a £20K donation.

- 1.5.5 Due to the time required for building the site and the ongoing impact on Covid-19 on public houses and the restrictions on indoor use TNB were eager to commence fitting out the site to provide an outdoor offer. The Council moved quickly to help TNB and a temporary arrangement was put in place in by means of a TAW to cover this fit out period.
- 1.5.6 TNB commenced trading from the subject property almost immediately following completion of works although this was not permitted under the TAW. In addition, the small building described by TNB as a serving counter had been fitted out as a kiosk/café and was operating as a sales outlet for tea/coffee/ice cream and associated products. This caused immediate complaints from the ice cream operator licensed in the park and subsequent complaints from the Millhouses Park Café tenant nearby. Both parties stated that they had not envisioned the servery being used as a sales outlet selling competing goods.
- 1.5.7 Due to unproductive negotiations with TNB and their ongoing unpermitted trading, the TAW with TNB was terminated in October 2021. A new TAW was offered by SCC to TNB that restricted takeaway sales and this was agreed and completed on the 2nd November 2021. Notwithstanding this new agreement the Council received reports that takeaway sales continued leading to the termination of that TAW on the 12th April 2022. Further negotiations were held with TNB in an attempt to resolve the issues, regularise their arrangements and fix the offer for visitors to Millhouses Park.
- 1.5.8 Subsequently, a new TAW was granted to TNB on 14th April 2022 (please refer to Appendix 1). Again, this envisaged no takeaway sales and contained restrictions to this effect.
- During the ensuing protracted discussions, the offer of the £20K donation was
- 1.5.9 withdrawn by TNB and the terms resulting are set out in Appendix 1

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The space within Millhouses Park proposed for lease by TBN was an unused, low quality grassed area within the park. The area was shaded under heavy cover from large trees. It was separated from larger grassed areas by the path network. The use of this piece of land has therefore not negatively impacted on the ability of local and city residents to use the green space for recreational activities.
- 2.2 The introduction of a second refreshment offer within the park during the summer months adds to the offer available to park goers and provides a further opportunity to take on refreshments and rest whilst in the park. The area around Millhouses Park is not as well served by café offers as other parks and localities so the introduction of a second facility provides variety to park users and those passing by the park.
- 2.3 The lease agreement provides a fixed rental fee which is income for both Millhouses Park and the wider park network across the city. However it is clear that the introduction of this second refreshment facility has and will continue to

reduce income that is generated through other partners in the park. We anticipate this potentially being a short-term impact with future agreements increasing income reflecting the significant use and opportunity in Millhouses Park.

- 2.4 The provision of this facility in the Park, aligns with the objectives of the Council's 5-year Better Parks Initiative and the agreed partnership principles
- 2.5 Better Parks is Sheffield's five-year initiative, which was approved by Cabinet in 2018, that seeks to sustain and improve our parks and green spaces by increasing commercial interest and income. It's 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 Millhouses Park, meets this criteria allowing investment and regeneration:
 - Affordable public access
 - 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 The principle of TNB being granted a lease over the site had been discussed informally with the Parks and Countryside department and once planning consent was granted, terms were negotiated and agreed by the Property Services team as set out in the attached Appendix 1.
- 3.2 Further discussions took place under the Council's 'Better Parks' strategy in 2018 which involved a city-wide consultation to better understand the needs and requirements of the public in using parks, green spaces and woodlands.
- 3.3 Online consultation was undertaken by Parks and Countryside following planning permission being granted (the analysis of the responses is available at Appendix 3). The consultation received 682 responses with a significant majority of respondents in favour of the proposals ('Do you like the concept design ideas for the Waggon and Horses' – 510 Yes, 130 No, 42 Unsure).
- 3.4 During the period from conversations being started about the potential proposals through to planning permission being sought and lease negotiations taking place, two petitions were launched. The first was started by the management of the Waggon & Horses (see Appendix 3) and received 1258 signatures in favour of the idea. The petition started by the Friends of Millhouses Park who were against the proposal launched a petition (see Appendix 4) which received 1929 signatures who opposed the idea.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality Implications

4.1.1 The addition of this facility in the park may encourage further use of the park including allowing people to stay in the green space longer than they otherwise would. These things would be of benefit to the public. The impact may therefore be positive across a number of characteristics (age, disability, health etc).

4.2 Financial and Commercial Implications

4.2.1 The proposed lease will generate a rental income from the site but may have an impact on income from other leases and licence holders in the park due to competition between TNB and the other operators. The details of the income expectations and the impact of this proposal are set out in Appendix 1. This proposal will not create an overspend on the overall budget for Millhouses Park.

4.2.2 We have sought commercial terms for the lease on the basis of a café operation and whilst some the original commitments offered by TNB are no longer being honoured the terms proposed are broadly in line with commercial terms elsewhere.

4.2.3 An 12 month rent free period has been agreed in recognition of the capital expenditure on the site but as no rent has yet been collected for the periods of occupancy and trading to date, there will need to be a reconciliation of monies owed and a set off against this sum.

4.3 Legal Implications

4.3.1 It is normal to use the device of a Tenancy at Will (TAW) to act as a temporary arrangement while parties regularise the use and occupation of land. This can be as part of a new leasing arrangement such as here. A TAW can be terminated by either party without reason (at their will) prior to the entering into a lease.

4.3.2 The entering into a lease is a disposal by the Council and as such should be in accordance with s123 of the Local Government Act 1972 and achieve best value for the Council.

4.3.3 The lease will be a business tenancy for the purposes of part 2 of the Landlord and Tenant Act 1954 which provides a degree of security of tenure to the tenant. The parties can agree to exclude the provisions that provide the security by way of a process known as “contracting out”. This would entail the incoming tenant TNB making a declaration stating that it is aware that it is being offered a tenancy that excludes the protection offered by the 1954 Act but will still enter into the tenancy. If the tenancy is not contracted out and the tenant does not intend leaving at the expiration of the term of the tenancy the landlord will need a statutory ground in order to regain possession.

4.4 Other Implications

- 4.4.1 None beyond those identified in this report. A Climate Impact Assessment is not required for this decision (the decision is to grant a lease for an area that has already been built).

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The offer of a lease could not be granted to TNB and they could be required to return the land in its original state (grassed area) to SCC. TNB have informed SCC that this path would result in their taking legal action to recoup the monies they have invested in the subject property. Furthermore, this would result in a reduced offer to the people who visit Millhouses, with less variety of offer and less capacity during those busy summer months.

6. REASONS FOR RECOMMENDATIONS

- 6.1 Whilst the route to gaining agreement for this offer within the park have been convoluted and at times difficult, overall we believe the park offer to those people that use is better with this second facility operating.

APPENDICES

- 1 Principal lease terms, previous tenancy terms and associated information
- 2 Plan
- 3 Analysis of responses from Parks & Countryside consultation on proposals
- 4 Waggon & Horses online petition
- 5 Friends of Millhouses Park and Carter Knowle & Millhouses Community Group online petition

This page is intentionally left blank